

SECRETARY OF STATE: ELECTIONS: POLLING PLACES: County auditors may designate voting site(s) for early voting in three ways: (1) absentee balloting alone during entire 46-day period before election; (2) both ballot counter-ballot box voting and absentee balloting during 7-day period before election; or (3) absentee balloting during 46-day period, with additional voter option of ballot counter-ballot box voting during final 7 days of period. Minn. Stat. § 203B.081, subds. 1, 3.



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January 2, 2020

Steve Simon
Minnesota Secretary of State
180 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1299

Re: Request for Opinion Concerning

Dear Secretary Simon:

I thank you for your December 13, 2019, letter requesting an opinion regarding the meaning of Minn. Stat. § 203B.081, subdivisions 1 and 3.

FACTS

You report that the Office of Secretary of State has a longstanding interpretation of section 203B.081 that it has provided to county and local election officials when they have requested an interpretation. Under your Office's longstanding reading, section 203B.081 requires that any polling place designated by a county auditor for use as an in-person absentee balloting site must be open and available to the public for the entire 46-day absentee balloting period.

The legislature amended the statute to add subdivision 3 in 2016. 2016 Minn. Laws ch. 161, art. I, § 2, at 593-94. You note that your Office has not until recently considered the effect on your interpretation of the alternative procedure provided by the new subdivision.

You indicate that a number of jurisdictions are now establishing absentee voting locations for elections in 2020 that they intend to operate for less than the entire 46-day absentee balloting period. In this context, you ask whether section 203B.081 permits a county auditor to (1) designate a location for in-person absentee balloting that operates for only a portion of the 46-day absentee balloting period or (2) establish locations for the alternate procedures identified in subdivision 3 that have not also served as locations for in-person absentee balloting locations for the entire 46-day period.

LEGAL ANALYSIS

The statute in question provides, in pertinent part:

Subdivision 1. **Location; timing.** An eligible voter may vote by absentee ballot in the office of the county auditor and at any other polling place designated

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by the county auditor during the 46 days before the election, except as provided in this section.

[...]

Subd. 3. **Alternative procedure.** (a) The county auditor may make available a ballot counter and ballot box for use by the voters during the seven days before the election. If a ballot counter and ballot box is provided, a voter must be given the option either (1) to vote using the process provided in section 203B.08, subdivision 1, or (2) to vote in the manner provided in this subdivision.

Minn. Stat. § 203B.081, subs. 1, 3(a) (2018). The remainder of subdivision 3 describes the new alternative voting procedure. *Id.*, subd. 3(b)-(e). Minnesota Statutes section 203B.08, subdivision 1, which is referenced in subdivision 3(a) of section 203B.081, governs the process by which voters mark and submit absentee ballots. *Id.* § 203B.08, subd. 1.

In response to your first question, subdivision 1 of the statute at issue provides that voters may vote by absentee ballot at “any polling place designated by the county auditor during the 46 days before the election.” *Id.* § 203B.081, subd. 1. Your Office has long explained to county and local election officials that this provision requires any polling place designated by a county auditor for in-person absentee balloting to be open for the entire 46-day period referenced in the statute.

This appears to be the correct interpretation of subdivision 1. If, hypothetically, a county auditor designated a particular site for in-person absentee balloting under subdivision 1 but failed to keep it open to voters for some portion of the 46-day period, a voter presenting herself at that site during the portion of the 46-day period that the polling place was closed would then be denied the right to vote by absentee ballot at that place and time, even though Minn. Stat. § 203B.081, subd. 1, explicitly grants her that right. Accordingly, the answer to your first question is that a county auditor may not designate a location specifically for in-person absentee balloting that operates for only a portion of the 46-day period before the election.

In response to your second question, the new alternative procedures that the legislature created in 2016 are clearly intended to permit county auditors to designate additional locations with ballot counters and ballot boxes for use by voters only “during the seven days before the election.” *Id.*, subd. 3(a). In the event that a county auditor elects to maintain a site with a ballot counter and ballot box, subdivision 3 requires election officials to permit voters to vote either via the in-person absentee process or the alternative ballot counter and ballot box method. *Id.* Moreover, the clear intent of the provision is that a voter is to be permitted to vote in either of these manners in the same location. *See id.*

Thus, the answer to your second question is that, under Minn. Stat. § 203B.081, subd. 3, a county auditor may designate one or more locations that operate only during the seven days

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before the election and at which voters are permitted to cast ballots by either the in-person absentee process or the ballot counter and ballot box process.

If a county auditor designates a particular site for absentee balloting alone, that site is governed by subdivision 1 and must be available for use by voters for the entire 46-day period prior to the election. If, however, the county auditor provides a ballot counter and ballot box at a particular site, the auditor need not designate the site for absentee balloting under subdivision 1; instead, she can open it pursuant to subdivision 3 alone, which means permitting voting during the seven days before the election by either the in-person absentee process or the ballot counter and ballot box process. As a final alternative, a county auditor could elect to designate a particular site for voting under both subdivisions 1 and 3: that is, in-person absentee balloting during the entire 46-day period prior to the election and ballot counter and ballot box voting as an additional option during the final seven days of that period.

Very truly yours,

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