

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified Clerk/Deputy Clerk of the City of Mounds View, Minnesota, hereby certify that I have carefully compared the attached and foregoing with the original thereof on file in my office, and the same is a full, true and complete copy thereof, insofar as the same relates to

Proceedings from court actions on the Charter Election

WITNESS MY HAND officially as such Clerk and the corporate seal of the City of Mounds View this 9th day of January, 19 80.

(SEAL)

Clerk

Jeffrey A. [Signature]

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COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
#440550

In the Matter of the Contest of the Special
Election by the City of Mounds View by
Thomas F. Rowley and M. Joan Warren for the
Adoption of a City Charter by the City of
Mounds View, Ramsey County, Minnesota, for
the Special Election held December 4, 1979.

ORDER

This matter was heard by the Court on December 19, 1979,
pursuant to a notice of election contest concerning the adoption of a
City Charter for the City of Mounds View. Petitioners Thomas F. Rowley
and M. Joan Warren were represented by their attorney, Patrick R. Sweeney,
1102 Minnesota Building, St. Paul, Minnesota, and the contestees were
represented by their attorney, Richard Meyers, 1752 Venus Avenue, St. Paul,
Minnesota.

The facts are not in dispute. A special election for the
adoption of a City Charter for Mounds View was held on December 4, 1979,
pursuant to Chapter 410 of the Minnesota Statutes. Section 410.11 states:
"If 51 percent of the votes cast on the proposition are in favor of
the proposed Charter, it shall be considered adopted."

There were 2,023 ballots cast with the following results:
1,031 'yes' votes, 985 'no' votes, and 7 defective ballots or undervotes.
It has been stipulated by the parties that the only legal issue before
the Court is whether the 7 undervotes are to be included in calculating
the total number of votes cast.

The governing body of Mounds View met as the canvassing board,
excluded the 7 defective ballots from the election results, and certified
that the City Charter proposition was adopted by a total vote of 1,031
yes and 985 no, or 51.14 percent. If the 7 undervotes were included in
the total vote, the yes votes would constitute .5096 percent of that total.

The Court finds that the defective ballots, or undervotes,
should not be included in determining the total votes cast and therefore
were properly excluded by the canvassing board.

It cannot be logically argued that a blank ballot or an
unintelligible one is a vote, since it does not express the preference
of the person attempting to vote. It is not a "vote cast on the proposi-
tion" within the meaning of the statute.

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It must be conceded that the Minnesota Supreme Court has expressed some conflicting views on this particular issue. The most recent decision, Godward v. City of Minneapolis, 190 Minn. 51, 250 N.W. 719 (1933) held that blank ballots were properly rejected in computing the total number of voters at a special election. At page 55, the Court stated:

"We cannot regard as a vote a blank ballot expressing no intention one way or another upon the question presented. Possibly it is a ballot cast, but certainly it is not a vote Certainly a voter cannot be said to have voted when he casts only a ballot blank on every proposition submitted to him."

See also Hopkins v. City of Duluth, 91 Minn. 189, 83 N.W. 536 (1900).

It seems to the Court that in determining whether a proposition such as a City Charter has been adopted, the votes to be counted on either side should only be those cast for or against the proposal. The case of Rikmoier v. Steffen, 131 Minn. 287, 155 N.W. 92 (1915) can be distinguished, since it dealt with the interpretation of a specific statute not applicable herein.

It should further be noted that in the event the seven under-votes were included in the total vote, in the opinion of the Court the Charter would still have been adopted, since the figure of .3096 percent should be rounded off to the nearest hundredth, or 51 percent.

OTIS H. GODFREY, JR.
Judge of District Court

DATED: December 27, 1979.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 17 1980

Jean Anderson Howe
Secretary of State

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O.D.