

1-7-105. Watchers at primary elections.

(1) Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county. The chairperson of the county central committee of each political party shall certify the persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson shall submit the names by the close of business on the Friday immediately preceding the election.

(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate shall submit the names by the close of business on the Friday immediately preceding the election.

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. **L. 2007:** Entire section amended, p. 1977, § 22, effective August 3.

Editor's note: This section is similar to former § 1-7-202 as it existed prior to 1992.

ANNOTATION

- I. General Consideration.
- II. Irregularities.

I. GENERAL CONSIDERATION.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Designation of poll watchers for political organizations is not required in order to ensure constitutional access to the voting process. *Baer v. Meyer*, 728 F.2d 471 (10th Cir. 1984).

II. IRREGULARITIES.

The presumption that election officers have faithfully discharged their duties always obtains until the contrary is shown. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

And the will of the people should not be defeated by an honest mistake of election officers. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

Moreover, literal compliance with prescribed forms is not required if the spirit of the law is not violated. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

And form should be subservient to substance when no legal voter has been deprived of his vote and no injury of any kind has been done to anyone. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

But where there is a gross disregard of the procedure and formalities required in the conduct of elections, whether permitted by design, through ignorance, or negligence, the returns should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

However, it is not necessary that actual fraud should be committed. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

Rather, when it is clearly established that frauds subversive of the purity of the ballot box and tending to nullify the popular will have been perpetrated by the election officers of a precinct, or have been perpetrated by others with their knowledge, connivance, and consent, and the extent of such frauds cannot be disclosed with reasonable certainty, the official returns from the precinct should be thrown out. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

However, where the counting officers divulged how the vote stood and left the tally books in an unlocked box, such irregularities did not constitute fraud subversive of the purity of the ballot box and tending to nullify the popular will or such culpable negligence as to render the doings of the election officials unworthy of credence and destroy the integrity of the returns. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

Entire poll ordinarily not rejected. The fact that illegal ballots have been cast, or that other irregularities have taken place, does not ordinarily warrant the rejection of the entire poll. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

But where it is impossible to separate with reasonable certainty legal from illegal votes, the entire vote should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).