

COUNTING PROVISIONAL BALLOTS

#	SITUATION	SHOULD BALLOT COUNT?	LEGAL AUTHORITY	COMMENTS
A	VOTER REGISTRATION			
1	Voter registered in office before books closed and advance voted during the next few days before the CEO processed the registration application.	YES	25-1122 25-2311	If voter's notice of disposition was not returned by mail before canvass day.
2	Voter registered at CEO office after books closed or at the polling place on election day and voted at the same time.	NO	25-2311(a)(6) 25-2311(e)	Law requires that a voter must register by the 21st day before election.
3	Registered voter had different name than on poll book due to marriage, divorce or legal proceeding and completed a new voter registration application.	YES	25-409 25-2316c(a)	Name changes and address changes are the two major reasons for provisional ballots as outlined in federal law (NVRA). Such ballots count unless invalid for another reason.
4	Registered voter had different name than on poll book and did not complete a new voter registration application.	NO	25-409 25-2316c(a)	The law requires a provisional voter to complete a voter registration application in order to receive a provisional ballot. This process updates the voter's registration information and eliminates the need for provisional ballots in future elections.
5	Voter was registered but voted in wrong precinct, but within the county, due to CEO error, board worker error, voter error, or insistence by voter.	YES (partial ballot)	25-3002(b)(3)	Law requires counting of partial provisional ballots—count races and questions that are identical when comparing provisional ballot to correct ballot for voter's precinct.
6	Voter was not registered.	NO	25-215 25-2302	Kansas laws require registration before voting.
7	Voter claimed to have registered at DMV, post office, state fair or NVRA registration outpost and CEO had no registration.	NO	25-215 25-2302 25-2421a	Unless CEO verifies DMV or CEO error.

B	VOTER MOVES			
	MOVES WITHIN COUNTY			
1	Registered voter moved within county within 30 days of election. Voted at former precinct.	YES	KS Const. Art. 5 Sec. 1; 25-3702	KS Constitution allows this so ballot not required to be provisional. Voter must complete Form FP1 before voting.

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2	Registered voter moved within county within 30 days of election. Voted at either new precinct or central location.	YES	25-2353, 25-409	Must complete new registration card before voting provisional ballot.
3	Registered voter moved anywhere in county and voted at new precinct.	YES	25-2316c(b)	Voter must complete a new voter registration application.
4	Registered voter moved within county at any time before election. Voted at either new precinct or central location.	YES	25-2353, 25-409	Must complete new registration card before voting provisional ballot. No time limit on date of move.
5	Registered voter moved within the county at any time and completed a new voter registration card.	YES	25-2353	If voted at new precinct or central location.
6	Registered voter moved within county within 30 days before election. Voted ballot at wrong precinct.	YES (partial ballot)	25-3702, 25-3002(b)(3)	Entire ballot valid if voted at former precinct. Partial ballot valid if voted ballot at precinct where not registered.
7	Registered voter moved within county more than 30 days before election. Voted at former precinct.	YES (partial ballot)	25-3702 25-3002(b)(3)	Partial ballot valid if voted ballot at precinct where not currently registered.
8	Registered voter moved within the county but refused to fill out a new voter registration card before voting.	YES (partial ballot)	25-409(a) 25-3002(b)(3)	Law requires counting of partial provisional ballots—count races and questions that are identical when comparing provisional ballot to correct ballot for voter's precinct.
MOVES OUT OF COUNTY, WITHIN STATE				
9	Registered voter moved anywhere in state within 30 days of election. Voted at former precinct.	YES	Kan. Const. Art. 5 Sec. 1, 25-3702	KS Constitution allows this, so ballot not required to be provisional. Voter must complete Form FP1 before voting.
10	Registered voter moved out of county but within state within 30 days before election. Voted in new precinct without re-registering.	NO	Kansas Constitution Article 5, 25-3702; 25-2316c(b)	Fail safe (provisional) voting only covers in-county moves. Former precinct voting only allows voting in precinct of former residence.
11	Registered voter moved out of county but within state more than 30 days before election.	NO	25-3702	Not protected by law. Needed to re-register at new address.

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C	ADVANCE VOTING			
1	Registered voter requested advance ballot, did not receive ballot and voted at polls.	YES	25-2908c	If CEO verifies that voter did not cast multiple ballots.
2	Registered voter voted in advance, then voted at the polling place.	NO	25-2416(b)	Election crime.
3	Registered voter returned advance ballot in unsigned envelope.	NO	25-1124(a) 25-1136(b) 25-3002(f)	Statutes clearly require signatures for voter identification purposes.
4	Voter signed another voter's envelope.	NO	25-1120, 25-1124	Law requires voter to sign statement on voter's own envelope unless another person signs for voter at voter's direction due to disability.
5	Two voters voted in advance. Ballot envelopes switched, signed by the wrong voter in same household. Both are eligible voters and signatures match.	NO	25-1120	Law requires voter to sign declaration on envelope containing his/her ballot.
6	Voter signed envelope but did not fill in address line.	<u>YES</u>	<u>AGO 2012-26</u>	Technical error that, by itself, does not invalidate ballot.
7	Voter submitted an advance voting ballot with ballot envelope not sealed.	YES		Technical irregularity unless CEO finds evidence of tampering.
8	Voter applied for an advance voting ballot after deadline for application.	NO	25-1119, 25-2302 25-2311(a)	Kansas laws set application deadlines to allow time for transmission of ballots and conclusion of advance voting before election.
9	Voter used power of attorney to obtain advance voting ballot and used attorney to vote.	NO	AG letter to SOS, Sept. 16, 1997	Power of attorney has no effect in voting. Laws provide for assisted voting if affidavit of assistance is filed.
10	Voter casts advance ballot, then dies. Election board makes ballot provisional pursuant to KSA 25-1136(c).	NO	25-1136(c) AG Opinion 2002-15	If ballot should count, then the directive to make it provisional is "vain, idle, or futile." There is a presumption that the legislature does not "enact useless or meaningless legislation."
D	OTHER			
1	Registered voter's name was found by CEO elsewhere in poll book.	YES	25-2908(b)	NVRA fail safe voting
2	Voter needed assistance – should not have been challenged.	YES	25-2909	No voter error
3	Voter voted provisional ballot, only one board worker signed envelope.	YES	25-702 25-716 25-3002(b)	Technical irregularity. No voter error.

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4	In primary election, registered voter requested and received a different party's ballot than the one registered for.	NO	25-3301(d) 25-3304(b)	If voter received ballot of party other than party of affiliation, ballot does not count. Unaffiliated voter may affiliate with a party and vote.
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5	Registered voter dies after casting ballot and ballot was not provisional.	YES	AG Opinion 2002-15	Non-provisional ballots are commingled with others are thus irretrievable and impossible to not count.
6	Registered voter returned a ballot after polls closed.	NO	25-106 25-1132 (advance)	
7	Voter accidentally presses "Submit vote" on DRE before he/she is finished. Voter completes provisional ballot.	NO	25-2908(c)(5)	Voter cannot vote twice. If ballot cast on DRE cannot be retrieved, it has been cast and included with the other votes, regardless of how many races voter had completed.
E	FEDERAL SERVICES VOTING			
1	Federal services voter who was absent applied for ballot by noon the day before election day by completing a standard FPCA (Form 76).	YES	25-1215, 25-1216(b)	May vote by fax or email. Not required to be registered.
2	Registered voter (non military) moved out of state but in the U.S. at any time before election. (See Presidential Situations for exception.)	NO		Not protected by law. Voter should check with new state for laws.
3	U.S. citizen eligible to vote in the election district moved out of U.S. and applied by noon the day before election day by completing a standard FPCA (Form 76).	YES	25-2314, 25-1216(b)	May vote by fax or email. Not required to be registered.
F	PRESIDENTIAL SITUATIONS			
1	New voter moved to KS within 45 days before election. Filed form PN by noon the day before election.	YES	25-1801(b)(1), 25-1802(a)	New resident may vote only on U.S. president race.
2	Registered voter moved out of KS within 45 days before election. Filed form PF in county of former residence in KS by noon the day before election.	YES	25-1801(b)(2), 25-1802(b)	Former resident may vote only on U.S. president race.
3	Registered voter moved anywhere within KS not more than 20 days before election. Filed Form PR in county of new residence by noon the day before election.	YES	25-1801(b)(3), 25-1802©	Relocated resident may vote only on U.S. president race.
G	VOTER IDENTIFICATION			
1	Voter in the county fails to provide valid identification, votes provisional ballot.	NO	25-2908(e) 25-3002(b)(8)	The law requires voter to provide ID in order to have ballot counted. However, if voter provides valid identification to CEO after voting