

# Selecting a Method for Elections in Nebraska – A Decision by Counties

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The Secretary of State has very limited powers in deciding the method selected for elections. According to NRS 32-202, he is only authorized to “supervise” the administration of elections. He does ask to be notified, and that he approves the processes involved in the methods a County wants to utilize so that he can be prepared to complete his supervision responsibilities and that the method complies with the legal requirements for an election.

## The Legal Basis for Manual Voting

Machines are only an “option” that clerks “may” use according to Nebraska State Law:

Section 32-1041

***“Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.”***

*(1) The election commissioner or county clerk **may** use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners.*

*(2) **No electronic voting system shall be used under the Election Act.**”*

*(3) **Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. The Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.”***

“May” and “Must” are critical legal words. May “allows” something to happen as a choice. “Must” requires that something happen. Of course, since the law was written when machines were only beginning to be used, the default option to electronic counting was the historical manual counting of ballots. At the time the law was written, some counties continued to manually count while other counties were using electronic vote counting machines. Manual counting was the “old” way. Today, a “new” voting or counting system would be if a county were to use machines from another company other than ES&S that is being offered by the Secretary of State. A new machine, other than the ES&S machines, would require Secretary of State approval. More recently, the Secretary of State has informed Counties that he would need to approve their manual counting process as well.

Notice in Paragraph 2, that you are not allowed to vote using an electronic voting system (there is an exception for handicapped voters).

Notice in Paragraph 3, the Secretary of State is given approval authority for the overall system, but not which method is used. In our case, he can approve how votes are counted manually to assure they meet the standards for all elections, but like in the past, he cannot stop a County from selecting to manually count. He does need to approve the process and details.