

From: **Rich Paces**

Date: Tue, Jun 27, 2023, 11:21 AM

Subject: FW: KERR COUNTY ELECTIONS (EI Response)

Please see below the complete chain of correspondence with the SOS office regarding hand count methods. The good news is that the SOS has clearly stated that TEC Chapter 65 manual counting is legal and requires no further approval or certification. They have also stated that the earlier method proposed by Mark in our last election integrity workshop would be considered a voting system and would require SOS approval and certification. Hence, for Kerr County at least, to have a chance of adopting a hand count method, we need to focus on Chapter 65 and perhaps various procedural issues to minimize the chance of any bad actors attempting to alter our elections (*e.g. 1. assign tally teams last minute via random drawing of names to form the specific 4 person team, 2. ensure that caller leaves the ballot in a position on the table so that a watcher can easily see to verify that the name called is consistent with the vote marked on the ballot, etc.*). At this stage even introducing the concept of adding overhead cameras for greater transparency (which I think would be great and a definite disincentive to cheating now that we will have felony penalties reinstated) could be problematic to the main goal which is getting rid of the machines and hand counting ballots. Something we can look at down the road, once either the commissioners court or one of our political subdivisions elect to adopt hand counting for their election.

Best regards,

Rich Paces

Kerr County Commissioner, Precinct 2

From: Heather Stebbins

Sent: Sunday, June 25, 2023 3:52 PM

Subject: FW: KERR COUNTY ELECTIONS (EI Response)

Please see SoS email in response to Commissioner Paces question about whether hand counting would require certification.

Heather

From: Charles Pinney

Sent: Friday, June 23, 2023 8:41 AM

To: Heather Stebbins

Subject: Re: KERR COUNTY ELECTIONS (EI Response)

Hello,

The hand-counting machine that was described in the original email would require certification as a voting system. However, if the county will be conducting a traditional hand-count based on the procedures outlined in Chapter 65 of the Election Code, then there is no requirement to obtain approval or certification from our office before doing so. We are happy to provide any guidance or relevant information about the process, but you are not required to obtain our approval.

Under Election Code 123.001, the commissioners court will generally make the decision about what type of voting system to adopt for county elections and the manner in which that equipment will be used. While state and federal law do require the county to provide at least one accessible voting machine at each early voting location and each election day polling location, the commissioners court does have the authority to determine that hand-marked, hand-counted paper ballots will be the primary method of voting for county elections. In other words, you can have hand-marked, hand-counted paper ballots as your primary method of voting, but you must still have at least one accessible voting machine at each polling location during early voting and election day.

Any contract to acquire a voting system (including the accessible voting machines) must be approved in writing by our office under Election Code 123.035. If the county will be acquiring new voting system equipment to comply with those requirements, then that contract must be approved in writing by our office. If the county will be using equipment that has already been purchased and that purchase was already approved in writing by our office, then you would not need to obtain another approval letter to use that same equipment that your county already owns for accessibility purposes.

Please let us know if you have any questions about this.

Thanks,

Chuck Pinney

Senior Staff Attorney – Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

[1.800.252.VOTE](tel:1800252VOTE) (8683)

elections@sos.texas.gov | www.sos.texas.gov

For Voter Related Information, please visit:

The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.

From: Heather Stebbins

Sent: Wednesday, June 21, 2023 2:01 PM

To: Charles Pinney

Subject: FW: KERR COUNTY ELECTIONS (EI Response)

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Good Afternoon Mr. Pinney,

Our Tax Assessor shared your email communications with the Elections Coordinator below.

One of our commissioners has asked me to further advise whether Secretary of State certification is required for Kerr County to switch to “manual hand count of ballots following the prescribed TEC Chapter 65 procedure.” It is my understanding that the County may not unilaterally switch to manual hand counting of ballots without SoS approval. Also, I understand that for disability reasons, we are required to have at least one accessible voting system at each polling place, and this will require SoS approval. Can you direct me to the statute that authorizes the commissioners court to approve a “manual hand count of ballots following the prescribed TEC Chapter 65 procedure” without SoS approval, if one exists please? If that is the case, will the County still need SoS approval for the accessible voting systems at each polling place?

Thank you for your time.

Heather Stebbins

Kerr County Attorney

700 Main BA-103

Kerrville, Texas 78028

830.792.2220 Phone

830.792.2228 Fax

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From: Bob Reeves

Sent: Thursday, June 15, 2023 3:20 PM

To: Heather Stebbins

Subject: FW: KERR COUNTY ELECTIONS (EI Response)

Here is a copy of what the SOS sent me and I gave to each commissioner in April.

Bob Reeves

Kerr County Tax Assessor/Collector

Please note that any communication sent to the Kerr County Tax Assessor Collector may become public record and made available for public/media review. ATTENTION PUBLIC OFFICIALS: a Reply to All of this e-mail could lead to violations of the Texas Open Meetings Act. Please reply only to the sender. This e-mail message may contain confidential and/or privileged information. If you are not an addressee or otherwise authorized to receive this message, you should not use, copy, disclose or take any action based on this e-mail or any information contained in the message. If you have received this material in error, please advise the sender immediately by reply e-mail and delete this message.

From: Nadene Alford
Sent: Monday, May 22, 2023 10:49 AM
To: Bob Reeves
Subject: FW: KERR COUNTY ELECTIONS (EI Response)

From: Charles Pinney
Sent: Tuesday, April 18, 2023 11:52 AM
To: Nadene Alford
Subject: Re: KERR COUNTY ELECTIONS (EI Response)

Hello,

Chapter 65 of the Election Code outlines very specific procedures for how a hand-count must be conducted for an election in Texas. The counting rules outlined in the Election Judges and Clerks Handbook reflect those statutory counting procedures.

The type of hand-counting machine displayed in that video would not satisfy the hand-counting requirements of Chapter 65 of the Election Code, which requires counting teams of two or more election officers, with one officer calling and the other officers tallying. Because Chapter 65 requires tally lists to be prepared as part of this hand-counting process, there is generally no electronic system that could be used to facilitate a hand-count in the manner you are describing.

This type of system would likely require certification as a voting system, as it arguably satisfies the definition of "voting system" and "automatic tabulating equipment" under Election Code 121.003:

(1) "Voting system" means a method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus and includes the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and

other software necessary for the system's operation.

(5) "Automatic tabulating equipment" means equipment, other than a voting machine, that compiles vote totals by ballot sorting, ballot reading, ballot scanning, or electronic data processing.

Please let us know if you have any questions about this.

Thanks,

Chuck Pinney

Senior Staff Attorney – Elections Division

Office of the Texas Secretary of State

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From: Nadene Alford
Sent: Monday, April 17, 2023 10:01 AM
To: Elections Internet ; Christina Adkins
Subject: KERR COUNTY ELECTIONS
Importance: High

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The Kerr County Commissioners' Court has asked my office to investigate the logistics of hand counting its ballots. The court recently held an elections workshop where one of the presenters was Mr. Mark Cook of Colorado. In his presentation a tabulating machine was used to keep track of the ballots which were being counted. The meeting was broadcast on YouTube at:

<https://www.youtube.com/watch?v=BDdY-RVjVLA>. An example of the machine used can be found at the 2 hour 29 minute mark of the broadcast.

Section B Item 5 of Appendix A in the Handbook for Election Judges and Clerks (Revised July 2022) reads "As each vote is read, a tally mark is made by the corresponding name or number on the tally lists. [Sec. 65.005(a)]".

Does this mean that an electronic recording device, such as the one demonstrated, cannot be used if the ballots are hand counted? If such device can be used:

1. Must it be certified?
2. Are there any machines which are certified that could be used to hand count or record the votes?
3. Since Section A, Item 2 of Appendix A, requires three original tally lists would it require three machines to tally such votes?

I realize that any legal opinions would have to come from my County Attorney. However, if you could help me find the exact language in the code which allows or does not allow such use it would be helpful.

If you have any questions, please let me know.

Thank you,

Nadene Alford,

Chief Deputy / Election Coordinator

Certified Elections and Registration Administrator (CERA)

Texas Registered Election Official (REO)

Kerr County Tax Office

700 Main St. Ste: 124

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830-792-2253 Fax

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