

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS  
EMERGENCY MEETING HELD ON  
WEDNESDAY, OCTOBER 26, 2022**

An emergency meeting of the Cochise County Board of Supervisors was held on Wednesday, October 26, 2022 at 1:00 p.m. in the Board of Supervisors' Executive Conference Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Ann English, Chairman; Peggy Judd, Vice-Chairman, telephonic; Tom Crosby, Supervisor, telephonic

Staff Present: Richard G. Karwaczka, County Administrator  
Sharon Gilman, Deputy County Administrator  
Brian McIntyre, County Attorney  
Christine Roberts, Chief Civil Deputy County Attorney  
Tim Mattix, Clerk of the Board

Chairman English called the meeting to order at 1:00 p.m.

**ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION**

**THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING**

***ACTION***

**Board of Supervisors**

1. Direction and action regarding a response to the Secretary of State letter dated October 25, 2022.

Vice-Chairman Judd made a motion to seek direction and action regarding a response to the Secretary of State letter dated October 25, 2022. Supervisor Crosby seconded the motion.

Mr. Karwaczka stated that the basis of the Emergency Board of Supervisors Meeting is that yesterday, the Board received a letter from Secretary of State Katie Hobbs that requested a response by 5:00 p.m. today. There are two requests: that the Board will not attempt to conduct a full hand count of all ballots cast in Cochise County under the false premise that it is preceding pursuant to A.R.S. § 16-602(B); and, that the Board will follow all applicable requirements, statutes, and the Elections Procedures Manual (EPM) when conducting its expanded precinct hand count audit under A.R.S. § 16-602(B). The letter further states that they need these assurances from the County by 5:00 p.m. today, otherwise, they will seek legal action.

Mr. Karwaczka stated that the Board can respond, or not respond, to the letter. The

Secretary of State is looking for what transpired based on the vote at the October 24, 2022, Special Meeting. He asked the Board for clarification on the Board's action, as follows: if the Board will proceed with a 100% hand count audit of all races and all ballots cast on Election Day, including a 100% hand count audit of all races and all early ballots; if the hand count audit will be conducted by County Recorder David Stevens and be in addition to the normal election tabulation process, to ensure agreement with the voting machine count; and, that this process shall be completed prior to the canvass of the General Election results.

Supervisor Crosby read his proposed response to Secretary Hobbs, as follows: Dear Secretary Hobbs and Ms. Korick [sic]: We know we have lots of work to do. If you care to assist, please contact County Recorder Stevens or Elections Director Marra. Best wishes in your future endeavors. Signed, Board of Supervisors."

Vice-Chairman Judd stated that all along, she intended to follow every law applicable related to hand counting. Secretary Hobbs gave instructions that Vote Centers would be used instead of precincts. There are requirements to follow, and she anticipates following them. If expenses are involved, the Senate has money for it. The County cannot conduct a full 100% hand count, but they can do four contested races and a ballot measure. There is something about how early ballots cannot be hand counted, though she has not looked into it. She stated that Secretary Hobbs sent the Board a letter that said the Board can do it, so long as it is done on the Secretary's terms. She is willing to do it according to the law. She would like to make a statement to Secretary Hobbs as follows: "We will do it as you said, according to the law. We recognize that we cannot do, according to the law, a full 100% hand count."

Chairman English stated that it seemed that Supervisor Crosby and Vice-Chairman Judd were not saying the same thing. Vice-Chairman Judd stated that she wants to do what Secretary Hobbs said, and confirm in writing that the Board will not attempt a 100% full hand count. She requested the response include that the County will comply with all statutes, not just A.R.S. § 16-602(B), and the Board will follow all applicable requirements in statute and the EPM when conducting its expanded precinct hand count.

Mr. McIntyre reminded the Board that the response to the letter, and who signs it, is the main issue today.

Mr. Karwaczka requested clarification, as what was voted on and what is being discussed now are different. Vice-Chairman Judd stated that the Board needs to respond in the affirmative to both questions, that the Board will not attempt a full count and will follow all applicable statutes and the EPM. Supervisor Crosby stated that he is willing to have no response. Mr. Karwaczka stated that there needs to be consensus.

Vice-Chairman Judd suggested that the Board say that it will not attempt to conduct a full hand count but will proceed with an expanded precinct hand count as the Secretary of State has allowed, following all applicable statutes and the EPM.

Supervisor Crosby said if his original letter was not enough, they could get clarification from the voting results of the meeting of October 24, 2022. He read comments from page two of Secretary Hobbs' letter regarding concerns of the legality of the agenda item. Mr. Karwaczka asked Supervisor Crosby if his intent was to proceed with a 100% hand count audit of all races from all the ballots on Election Day and the early ballots. Supervisor Crosby said his intention was to hand it off to

the County Recorder and Elections Director. In response to Board discussion, Supervisor Crosby stated that his understanding is that the County Recorder volunteered to do so.

Mr. Karwaczka stated that it seemed from the previous meetings that the County Recorder would put together the hand count. Vice-Chairman Judd stated that Recorder Stevens would be allowed to, as the motion stated Recorder Stevens or other elections official. She stated that the Board never intended to break the law and she does not see how this is illegal. She would like to tell the Secretary of State that the Board will do as big of an expanded precinct hand count as allowed under the statutes. She stated that the letter should include that the Secretary of State could reach out to the County Recorder because he was given the authority to do the hand count.

Chairman English asked the Board what they want to include in the letter in response to the Secretary of State.

Supervisor Crosby read the following response: "Dear Secretary Hobbs and Ms. Korick [sic]: We know we have lots of work to do. If you care to assist, please contact County Recorder Stevens or Elections Director Marra. Best wishes in your future endeavors."

Vice-Chairman Judd added the following to the response: "The Board wishes to follow all applicable requirements in statute and the EPM when conducting its expanded precinct hand count audit." This will be inserted prior to "Best wishes in your future endeavors." Supervisor Crosby concurred.

Chairman English asked who will sign the letter. Vice-Chairman Judd and Supervisor Crosby agreed to sign electronically. Chairman English summarized the consensus of the Board to prepare the letter.

Chairman English stated her concern that there are only three people working in the Elections Department, and requested that the Elections Director be withdrawn. Supervisor Crosby objected and clarified that the hand count would be by the County Recorder or the Elections Director.

Chairman English called for the vote and it was approved 3-0.

2. Direction and action regarding obtaining outside legal representation.

Supervisor Crosby moved to discuss direction and action regarding obtaining outside legal representation. Vice-Chairman Judd seconded the motion.

Mr. McIntyre stated that if there is litigation, the Board will need an attorney to respond. In light of the discussion about how the hand count will be conducted, if issues arise, there will be a conflict in the County Attorney's Office, and the Board is entitled to select counsel. He reached out to a neighboring county about potential outside counsel. The Board needs to authorize someone to engage the outside legal representation.

Supervisor Crosby read two statements dated October 25, 2022 from attorney, Mr. Timothy LaSota, Esquire: She [Secretary Hobbs] should consult her own elections manual; and, the last time she was in court, the taxpayers of the state got hit with a \$2.75 million federal jury verdict thanks to her racial and sexual discrimination. If she

sues, we will vigorously defend ourselves from this desperate publicity stunt by a proven loser in court.”

Vice-Chairman Judd stated that because the Board is responsible for paying for their own attorneys, she has not yet sought legal advice. Mr. McIntyre clarified that he is primarily talking about an attorney to represent the Board of Supervisors as an entity. If there are personal claims against individual Supervisors, the individual Supervisors would seek their own counsel. He stated that Mr. LaSota is actively in litigation against the County and it would be a conflict of interest for him to represent the Board as an entity. The action the Board needs to take today is to authorize someone, typically the County Administrator, to sign a fee agreement for the Board's attorney once selected.

Vice-Chairman Judd asked if she could make suggestions for attorneys to represent the Board, including those at a potentially low cost. Supervisor Crosby stated that he does not plan to incur any cost because the Board will win. Mr. McIntyre stated that there are costs associated with retaining an attorney, and someone needs to authorize that to proceed. Vice-Chairman Judd stated that her contacts either have funding or can do pro bono work.

Vice-Chairman Judd requested to table the item to another meeting date. Discussion ensued regarding the appropriate meeting date and potential need for another emergency meeting if any legal action is taken before then.

Chairman English stated that if the County Attorney has excused himself, the Board needs legal representation. She asked if the Board can authorize Mr. Karwaczka or the County Attorney to obtain legal representation, or if a name is needed. Mr. McIntyre stated that his ethical duty is to ensure the Board has legal counsel and his office can not ethically proceed as counsel with this item. He suggested that the Board take action to authorize the County Administrator or Chair to retain outside counsel for the purposes of any litigation or legal inquiries.

Chairman English stated that she has no knowledge of the legal community and asked to authorize the County Administrator to spend the funds necessary to secure outside legal counsel. There was no consensus to proceed. Vice-Chairman Judd stated that she would like a chance to present options. Mr. McIntyre stated that the Board can not represent itself in a legal action; due to the expedited basis in which it would need legal representation, he suggested the Board authorize the County Administrator to obtain outside legal representation at as little or no cost as possible.

In response to the Board, Mr. McIntyre said there is no specific guidance provided in writing advising the Board how to proceed with obtaining outside legal representation.

Vice-Chairman Judd made a motion to table this item until the November 1, 2022 Special Meeting, at 10:00 a.m. Supervisor Crosby seconded the motion.

Chairman English called for the vote and it was approved 3-0.

Chairman English adjourned the meeting at 1:58 p.m.

APPROVED:

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Ann English, Chairman

ATTEST:

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Tim Mattix, Clerk of the Board