

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
WORK SESSION HELD ON
TUESDAY, OCTOBER 11, 2022**

A work session of the Cochise County Board of Supervisors was held on Tuesday, October 11, 2022, at 2:30 p.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

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

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

Attendees: David Stevens, County Recorder
Dr. Joseph Patterson

Chairman English called the meeting to order at 2:30 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

ITEMS FOR DISCUSSION

Board of Supervisors

1. Discussion and possible direction regarding conducting a hand count of ballots.

Vice-Chairman Judd introduced the item. She stated that there is a need to discuss an additional hand count of ballots on top of the existing system. Citizens have expressed concerns about their ballots not being counted. This is in addition to machine counting. Citizens have volunteered to hand count the ballots; the group will include volunteers of mixed political parties. This would be one-time and more of an audit than determining the outcome of the election.

Supervisor Crosby stated that his request is, "The Elections Department will take actions necessary to complete a total County wide hand count of ballots for the 2022 general election." His intent is not to replace machines with a hand count.

Chairman English requested information regarding a timeframe and cost. Supervisor Crosby deferred to Recorder Stevens for logistics; he believes the cost would be very low, as 140 individuals have volunteered so far. His wish is to start this process as soon as possible.

Recorder Stevens presented using a PowerPoint presentation. He reviewed various election statistics from the 2022 Primary and 2020 General Elections. Election costs include approximately \$1 million in equipment and costs for ballots. The hand count could be done from now until Election Day, or a validation after Election Day. Additional

costs would include people and space. A procedure or policy would need to be developed for the hand count. There were approximately 390 ballot styles for the 2022 Primary Election; as an example, Benson could have had 5 ballot styles. The hand count could be done, as an example for Benson, with 3 precincts at a time to reduce personnel and cost. Once early ballots are validated, they can be tabulated, leaving one month to tabulate ballots before Election Day. He reviewed the average daily ballots the Recorder's Office received in the 2020 General and 2022 Primary Elections. There is a required 5-day period after the election to cure signatures.

Chairman English expressed concern about hand counting ballots as they are received, and the potential for word to get out. Recorder Stevens responded that the Elections Director currently knows the totals prior to Election Day; a group of people may know for the area that they are working, but not for other areas. He stated that it is a concern. He detailed the cast vote record; it is a machine-generated report and cannot be produced by hand. A separate, secured facility would be needed for the hand count, adjacent to the Vote Center.

Vice-Chairman Judd requested Dr. Patterson speak regarding public participation.

Dr. Patterson stated that no one accused anyone of doing anything wrong. The purpose of the proposal is due to mistrust of the system that caused division. He wants to restore trust and reestablish unity, with the end goal that the hand count matches the electronic results. He requested a motion to proceed with this initiative and approve it in such a way that when the final count is done, the hand count is completed before certification of results. Statute requires each county to have an emergency backup system that could be utilized if the machines go down. This could be a test to prove the reliability of the backup plan. He stated the right to do a hand count has always been an option.

Chairman English noted that Work Sessions are for information only, not action, and there would need to be an agenda and notice to the public. Dr. Patterson suggested it could be an emergency; the Board discussed the authority to determine what constitutes an emergency. Supervisor Crosby called for consensus to schedule a meeting. Vice-Chairman Judd concurred with the proposed agenda wording and noted that hand counting may be less accurate than machines. She discussed making it work within the bounds of the law. Chairman English noted that a majority of the Board agreed, but that more information is needed before it is brought to the Board for a vote.

Supervisor Crosby requested that the vote occur on Thursday (October 13, 2022).

Mr. Karwaczka stated that the question is whether the Board has the power and authority to move forward. He previously requested the Board and Recorder Stevens provide the statutory authority. State statutes and the Secretary of State's Elections Procedures Manual (EPM) must be followed by law; failure to do so is a misdemeanor crime.

Supervisor Crosby stated his preference that the meeting be held on Thursday, and that Mr. Karwaczka has until then to identify what precludes the Board's authority. Mr. Karwaczka said that the preclusion is that the statutory Powers of the Board are listed in A.R.S. § 11-251(3): establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the results and issue certificates thereof.

Vice-Chairman Judd discussed A.R.S. § 16-621 regarding proceedings at the counting center being under the direction of the Board of Supervisors or other officer in charge of

elections. She does not see a statute limiting a hand count to 5%. Ms. Roberts stated that no statutory powers given to the Board address the board's ability to determine a hand count. There is no authority in the EPM to do an independent hand count. The only mention of a hand count is that should there be a failure of the machines, there has to be a backup. Neither the statutes nor the EPM give the Board any power to do this. In response to Supervisor Judd, Ms. Roberts stated that the EPM contemplates a failure of the tabulation system, and that is when a hand count could be implemented.

Supervisor Judd discussed the Board of Supervisors' elections responsibility. Ms. Roberts stated that, whatever power the Board ceded to Ms. Lisa Marra, Elections Director, on behalf of the Board, the Elections Director has to follow state law. Nothing addresses hand counting.

Chairman English noted that the Board depends highly on the County Attorney's Office to give accurate information that must be relied on.

Dr. Patterson stated that he did not find a prohibition on hand counting and discussed his thoughts on the history of hand counting and the tabulation machines. His understanding is that there is no requirement to use the machines; a hand count was never taken away.

Ms. Roberts stated that the Board does not work on statutes that prohibit things; the Board is given express authority under the statutes to do certain things. The Board is not given authority to do a hand count. Statutes and the EPM are written for the use of tabulation equipment. Unless statute specifically gives the Board authority, the Board is not authorized to do it. The only recourse is to go to the State Legislature to amend the statutes.

Chairman English stated that the state has told the County that something cannot be done unless counties have been authorized to do it.

Dr. Patterson stated his thought that the state has never taken away the right to hand counts.

Vice-Chairman Judd stated that the County could get an Attorney General's opinion to do a hand count. She does not see where the law is being broken by doing a hand count. The volunteers should be engaged; an equal representation from political parties is needed. She would like to get an opinion on whether it can be done. The Board discussed whether the first step is to find out if this is legal, or instead put it to a vote. Vice-Chairman Judd requested to give direction to staff to find out more information and to move forward as far as possible.

Ms. Roberts stated that the Board has no authority other than what is in statute and the EPM. There is no specific authority for the Board to do a hand count. The Election is 3 ½ weeks away from the 2022 General Election; the Purcell Doctrine (Purcell) says that procedures cannot be changed this close to an election due to voter confusion, which creates an increased liability exposure for the County. The Board should consider these when discussing this. Today's meeting is a Work Session and there is no vote or action to be taken today, other than to consider the direction the County is going. Supervisor Crosby stated that Purcell has to do with voters and voting not counting. Ms. Roberts responded that Purcell has a broader implication; the point of law from Purcell is to not make changes to the Election system this close to an election.

Dr. Patterson stated that there is not a law against an emergency back-up plan.

Vice-Chairman Judd stated that if the County can obtain the legal opinion from the Attorney General, she is willing to accept that this may not be possible this year. She stated that the results of the election are not being changed. The procedures can be set up to not impede voters in any way.

Chairman English stated that agenda items must be submitted in writing and sent through the County Attorney's Office prior to being placed on an agenda. Vice-Chairman Judd confirmed this will be her next step, in addition to doing additional research.

Chairman English adjourned the meeting at 3:30 p.m.

APPROVED:

Ann English, Chairman

ATTEST:

Tim Mattix, Clerk of the Board