

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
WORK SESSION HELD ON
FRIDAY, OCTOBER 28, 2022**

A work session of the Cochise County Board of Supervisors was held on Friday, October 28, 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
Kris Carlson, Civil Deputy County Attorney
Tim Mattix, Clerk of the Board

Attendees: David Stevens, County Recorder
Lisa Marra, Elections Director

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

ITEMS FOR DISCUSSION

Board of Supervisors

1. Discussion and possible direction regarding the expanded hand count of ballots, as approved by the Board of Supervisors on October 24, 2022.

Ms. Marra detailed the existing hand count process, which is outlined in statute and the Elections Procedures Manual (EPM). On May 4, 2022 she met with the two party chairs and reviewed a calendar of events for the Primary and General Elections. The Primary Election hand count was conducted with 100% accuracy. The agreed-upon deadline for the party chairs to provide their political party observers and hand count members for the General Election was October 21, 2022. Both parties submitted 6 member names, alternates, and observer names. The hand count process must begin within 24 hours after Election Day. At 2:00 p.m. the day after the Election it begins, when the random draw by lot is done. The party chairs take turns drawing four contested races, two of the 17 vote centers, and a 1% minimum of early ballots cast. The early ballot draw is typically completed on election morning. The early ballots are random batches, which are sequestered with a results report as they are counted. Enough early ballots are sequestered to expand up three times in case the hand count numbers do not match. At 9:00 a.m. on the first Saturday after the election, the 12 hand count members are divided into 4 boards and begin training and the hand count process. The required reports are filed online with the Secretary

of State within two days. Changes this close to an election are problematic.

In response to the discussion, Ms. Marra stated that under the EPM, the hand count is automatically expanded into additional batches if the numbers are off; the allowable range is very small. Expansion can happen up to three times.

Vice-Chairman Judd read an excerpt of a statement she received from the Attorney General, via Senator David Gowan, as follows: "In sum, the office concludes that pursuant to A.R.S. § 16-602, the Board is permitted to perform an expanded hand count audit of all ballots cast in-person at 100% of the precincts or voting centers, located in Cochise County. Moreover, the Board is permitted to perform an expanded hand count audit of 100% of early ballots cast in Cochise County. The Board must limit the number of competitive statewide and federal races to five." She stated that if it cannot be done during the regular hand count, the full hand count can wait until the entire election process is over. Her intent is for the hand count audit to be separate from, and not affect, the results of the election; it would be an audit to verify the effectiveness.

Chairman English discussed the process of the party chairs selecting the individuals for the hand count, and asked why there was not a planning process. She noted that, according to the Purcell Doctrine, changes to election processes cannot be made close to an election. Vice-Chairman Judd stated that her understanding is that it will be independent of the election process.

In response to Mr. McIntyre, Ms. Marra stated that the hand count is typically done by the Saturday after the election. She noted concerns with the chain of custody due to mandatory recounts which may occur; the Secretary of State will canvass on December 5, 2022, after which any mandatory recount will be done. If both parties do not participate, a hand count does not happen. She discussed challenges with sequestering ballots. She stated that nothing should happen until after the Secretary of State canvasses on December 5 due to the possibility of a mandatory recount. She expressed concern with breaking the chain of custody.

Mr. McIntyre stated that the agenda item passed by the Board said that the hand count shall be completed prior to the canvass of the General Election.

Mr. Stevens stated that a variable is the total number of ballots; he estimates the number of early ballots to be 35,000. His office currently has approximately 17,000 ballots and he estimates approximately 10,000 Election Day ballots. The deadline for hand count board members is next Tuesday; he estimates approximately 50 individuals from each party are needed.

Mr. Karwaczka noted that the Board action item stated A.R.S. § 16-602(B), which he believes is strictly Election Day ballots. Supervisor Crosby stated that the November 4, 2020 Attorney General memorandum to the Maricopa County Board of Supervisors he referenced, regarding expansion of a hand count of voting center locations, cited A.R.S. § 16-602(B), which is why he included it.

The Board discussed their action item to approve the hand count; Supervisor Crosby stated that it was for 100% of precincts, not 100% of ballots.

Mr. McIntyre asked how large a facility is needed, how many people are needed, and the secure facility's location. Mr. Stevens questioned whether the County has a facility that can house 300 people. In response to the Board, he stated that he has not yet contacted the Democratic Party. The person in charge has the discretion to

say whether there are not enough volunteers for it to happen. The Board and Mr. McIntyre discussed the number of Democratic Party representatives who will volunteer and implications of no or not enough volunteers. Mr. Stevens stated that there cannot be more than 75% of one party and the members who represent a party do not need to be a member of that party. The party chairs need to provide the names.

Mr. Karwaczka requested confirmation that the Elections Director will proceed with the normal process. Vice-Chairman Judd confirmed. In response to the discussion, Mr. McIntyre stated that in order to properly canvass the election by the required time, Ms. Marra is requesting to proceed with the normal process for the hand count, as she outlined earlier, and as has been in place for some time. A.R.S. § 16-602 requires ballots to remain in the custody of Ms. Marra, as the officer in charge of elections for the purpose of any required hand count and for the security of the ballots. Mr. Stevens, Mr. McIntyre, and Mr. Karwaczka discussed the responsibility further.

Vice-Chairman Judd stated that she is fine with Ms. Marra proceeding with the hand count, but that she still would like the full hand count audit to proceed, after the Elections Director has satisfied everything required to complete the election. She stated that she does not agree that the Elections Director is the only one who can have custody of the ballots. Ms. Marra stated that the custody ends with her after the election; the ballots then go to the Treasurer's vault, where they are properly retained. The Board discussed the timing, noting that the approved action stated that the hand count would be completed prior to the canvass of the election.

Mr. McIntyre stated that, with the upcoming deadline for the party chairs to submit names, it may be appropriate to consider resetting a Work Session until that time, to determine if there is equal participation and whether the expanded hand count can occur. Mr. Stevens stated that if the Board proceeds with the two hand counts, two days are taken away from him to conduct the hand count. Mr. Stevens will contact the Democratic Party chair after this meeting to determine participation.

Mr. Stevens and Mr. McIntyre discussed who is responsible; Mr. McIntyre stated that the statute anticipates the list of workers being provided to the Elections Director. Mr. Stevens asked if he is the other officer in charge of the election process due to the Board's action; Mr. McIntyre stated that he does not believe the Board's action modifies the way that A.R.S. § 16-602 is read.

Mr. McIntyre suggested another Work Session be scheduled to discuss the details, after it is determined whether there are enough participants. Mr. Stevens stated that there is no need for a Work Session as he is able to make the decision. He will also determine whether there are enough participants to move forward.

In response to Supervisor Crosby regarding legal representation of the Board and Mr. Stevens, Mr. McIntyre said his ethical obligation to his client continues until the client has outside legal counsel. It remains his opinion that conducting the expanded hand count is barred by the EPM, statutes, and the Purcell Doctrine. The Board and Mr. Stevens will need outside legal counsel, as Mr. McIntyre has advised that he cannot advise them during the process. He still needs to be present to advise the Board during open meetings. The Board will meet on November 1, 2022, for the purpose of obtaining outside legal counsel. He further discussed his ethical responsibility.

Chairman English discussed her concerns with asking the County Attorney to advise

them when he previously advised that the process is illegal. Vice-Chairman Judd discussed her concern with the County Attorney telling the Board things to make them vote in a certain way; she believes that there is a legal way to do this. She asked when the County Attorney will step back and the outside legal counsel begin working with the Board and Mr. Stevens. Mr. McIntyre stated that the Board tabled the discussion of obtaining outside counsel until November 1, 2022 and that he believes it is a mistake to already refer to having separate counsel when a vote has not been taken. Vice-Chairman Judd noted her acceptance.

Chairman English adjourned the meeting at 2:05 p.m.

APPROVED:

Ann English, Chairman

ATTEST:

Tim Mattix, Clerk of the Board