

January 22, 2024

Representative Proctor and members of the committee,

I have been fighting since August 2022, to require the election clerks and commissioners to adhere to the statute regarding K.S.A. 2023 Supp.25-3009 (b)(1) and the required use of paper ballots for post election audits. I find it sad that we must waste valuable time of the legislators, Attorney General and his staff to further clarify what the statute already requires by introducing new legislation and obtaining Attorney General Opinion No. 2023-13 dated December 19, 2023 (attached). This opinion also states, what everyone but the Secretary of State seems to understand, that the paper ballots, not the printed images must be used. Even if this proposed change to the statute is signed into law, my concern is KAR 7-47-1 (d) is still a legitimate document which continues to provide for the use of ballot images. (see highlighted section of Reg below) Per Mr. Clay Barker, the process to amend a regulation takes a year or more. This statute does nothing to stop the current Regulation from overriding the existing or any new statute. Since I've been watching this legislation, the statute has not been the problem. The Secretary of State's Rules and Regulations regarding the statute is where the issue lies and requires immediate correction or nullification.

**7-47-1. Postelection audit implementation.** The requirements of this regulation shall not apply to local question elections or mail-ballot elections pursuant to K.S.A. 25-431 through 25-441 and amendments thereto. (a) As used in K.S.A. 25-3009 and amendments thereto, the term "unofficial election night returns" shall include ballots cast and counted on election day, ballots cast in advance and counted on election day, and ballots cast by means of the uniformed and overseas citizens absentee voting act (UOCAVA) procedures and counted on election day. This term shall not include any ballots cast that are challenged or marked as provisional or any ballots that are cast in advance and received after election day. (b) Each county election officer shall complete the training provided by the secretary of state. As specified in K.S.A. 25-3009 and amendments thereto, each county election officer shall provide training to the election board conducting the postelection audit. The training shall include the identification of voter intent specific to the vote-casting technologies in use across Kansas. (c)(1) An auditable race and precinct shall be a race and precinct meeting the requirements in K.S.A. 25-3009, and amendments thereto, for an audit to be conducted. The random selection of races and precincts shall take place in a public setting, and the procedure to randomize the selection of races and precincts shall be determined solely by each county election officer and the secretary of state. Upon completion of the audit, each election board shall transmit to the secretary of state and the county election office the results of the audit no later than 48 hours before the meeting of the county board of canvassers. (2) In even-year elections, within 24 hours of the closing of the final polling location in Kansas, the list of randomly selected races to be audited shall be transmitted by the secretary of state to each county election officer. Each county election officer shall examine each race in the order specified until an auditable race is determined. Each county election officer shall then randomly select one percent of the total county precincts from the subset of auditable precincts. If no contested race exists, the election board shall audit the first race listed. (3) In odd-year elections, each county election officer shall randomly select the races and then each precinct to be audited. (d) Ballot images may be used for the manual audit if imaging technology exists during the tabulation process on election night. (Authorized by and implementing K.S.A. 2022 Supp. 25-3009 and K.S.A. 2022 Supp. 25-2912; effective, T-7-6-26-19, June 26, 2019; effective Sept. 27, 2019; amended Oct. 13, 2023.)

Kari Sue Vosburgh  
Sedgwick County Precinct Committeewoman

