



**PIMA COUNTY ELECTION INTEGRITY COMMISSION
MEETING MINUTES FOR OCTOBER 16, 2015**
<http://www.pima.gov/commission/ElectionIntegrity.shtml>

The Pima County Election Integrity Commission met in regular session on October 16, 2015 at 9:00 a.m. in the Herbert K. Abrams Building, 3rd Floor Conference Rooms 3108/3110 at 3950 S. Country Club Road, Tucson, Arizona.

ITEM 1. ROLL CALL

Present: Matt Smith, Brian Bickel, Bill Beard, Arnie Urken, Beth Borozan, Karen Schutte, Barbara Tellman, Chris Cole, and Tom Ryan.

Also Present: Ellen Wheeler, County Administrator's Office; Mary Martinson, Elections Department.

Absent: Jeff Rogers, Brad Nelson

ITEM 2. PLEDGE OF ALLEGIANCE

The American flag was saluted with the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTE SUMMARY – September 25, 2015

It was moved by Chris Cole, seconded by Brian Bickel and carried unanimously to approve the Minutes of the September 25, 2015 meeting.

ITEM 4. CALL TO PUBLIC

Tom Ryan announced that Chris Cole has asked to read a statement from the public. It will be read but not discussed. Chris said that several EIC members should have gotten the email from Jon Brakey. It is an email in support of the EIC's recommendation letter to the Board from AuditAZ and Citizens Oversight for Verifiable Elections. The email points out that it doesn't resolve the vote-by-mail problem of being unverifiable. They also support the EIC's efforts to have ballot images audited.

ITEM 5. RECOMMENDATION TO BOS FOR HAND COUNT AUDIT FOR 11/03 ELECTION – Tom Ryan

- EIC Letter to the Board
- Board of Supervisors Tentative Approval

Tom Ryan noted that a few of the EIC members attended the Board meeting and spoke. The Board voted unanimously to support the recommendation [a copy of the recommendation is incorporated into these Minutes as Attachment 1], with a friendly amendment to include a hand count of a race in Oro Valley. Mr. Huckelberry then made a statement about a legal problem posed by one of the statutes. He wrote a letter to the Secretary of State (SOS) and the Attorney General (AG), asking for

clarification as to whether or not a hand count can be done for local elections [copies of Mr. Huckelberry's letters are incorporated into these Minutes as Attachment 2]. A response has not been received to date. Karen Schutte stated that the Secretary of State will provide a response on Monday [October 19, 2015]. It is hoped that both responses will be received in time for the Board of Supervisors' meeting on October 20th. The Board had voted to tentatively approve the recommendation subject to the opinions rendered by the SOS and AG, and will cast a final vote on the 20th.

Tom said he also sent a note to Mr. Huckelberry saying that he wasn't sure that a clear distinction between the County's bond election and the City's election had been made in his letter to the AG, and that they may come back with a statement referring to one but not the other. Mr. Huckelberry's response to that was that he believes they can do the City's hand count regardless of the State's decision. Tom's other concern was that there should be a push for a change in the law that says the County can hand count local elections; Mr. Huckelberry agrees and will include such in their legislative agenda. Mr. Huckelberry then sent Tom a note showing Pima County's legislative objectives: 1) Modification to any existing state law that precludes hand count audit of any local or county election; 2) Allow the county in conducting an election to scan and sort early ballots by precinct for auditing election results by precinct; and 3) Provide authority for the county at the county's option to conduct their elections by mail.

Bill Beard shared what happened after the October 6th Board meeting with the students and some of their questions. There were at least a dozen U of A journalism students that asked some of the most intelligent questions concerning election integrity that Bill has ever heard from a reporter. He has been frustrated over the years by the lack of media attention to some of these issues. Bill also noted that Mr. Huckelberry's interpretation of A.R.S. §16-602 seems nowhere close to the original intent when the legislation was drafted. Chris Cole added that, after that meeting, he sent each of the five supervisors an email saying that Mr. Huckelberry is "full of it." Tom reasoned that if interpreted on its face, the statute could be interpreted as precluding local hand count audits, even though that may not have been the intent in the original crafting of the bill.

Karen Schutte asked if it is normal for Mr. Huckelberry to add his own recommendation, and in this case he does not recommend the hand count. Tom explained that Mr. Huckelberry is basing his opinion on an opinion by the County Attorney [included in Attachment 2, pages 4 through 12]. Ellen Wheeler added that the County Attorney said that it would be illegal under the statute for the County to do a hand count audit for this election. Bill Beard asked if anyone really believes that if Pima County on its own were to conduct a hand count audit, they would be sued. Ellen clarified the action would not be a lawsuit, it would be a prosecution, since a violation of the law would constitute a felony. The County Attorney has written a legal opinion, and it is the County Attorney that is the authority to prosecute, not the AG. A citizen could demand there be a prosecution and it would go to another county for review.

ITEM 6. SECRETARY OF STATE & STAFF AT NOVEMBER EIC MEETING – Tom Ryan

- List of Topics for Discussion
 - Election Legislation
 - Other Discussion Topics

Tom Ryan had sent an email to Eric Spencer regarding this particular statute; as part of that note, Tom re-extended the invitation to come to a future EIC meeting. The response was that they would like to come in November. The Commission needs to come up with a list of topics for discussion. Tom believes that Secretary Reagan, Eric Spencer and some new SOS employees will be coming.

On the top of Barbara's agenda would be any changes proposed for election law and the *Procedures Manual*. Bill Beard added that in Eric Spencer's presentation on election law proposed changes, it seemed that everyone from both sides of the political party aisle agreed that his points about the contradictions from one section to another need to be fixed. Barbara would also like to know why the public input meetings on the *Procedures Manual* have not happened.

Tom would like to include the policy on ballot images.

Arnie Urken added the Secretary of State's position on ballot selfies; the law doesn't really clarify the issue.

Chris Cole suggested discussing integrity commissions across the state.

Tom will send a note to the Secretary of State for their ideas on items for discussion.

ITEM 7. ES&S SYSTEM SECURITY QUESTIONS – Brad Nelson

- ES&S Responses to EIC Questions

This was discussed at the last meeting, but Arnie Urken had some concerns and Tom wanted to allow him to express those concerns. Arnie's main concern is ES&S's answer to the question about taking responsibility for a system failure. [A copy of the security questions and ES&S responses is incorporated in these Minutes as Attachment 3.] The Secretary of State may want to comment on it, but as a citizen, Arnie found it disturbing that they don't take responsibility. Barbara asked if it isn't in the contract, can an amendment be made to the contract? Arnie responded that a lot depends on the State supporting this so that all counties are covered. No one county is going to fight the battle.

Tom said there must be some kind of warranty on the system. Arnie said that needs to be clarified, and whether we can expect ES&S to respond in contingencies. According to the ES&S response, if we want additional support, it can be purchased. But if a part fails, can we count on their getting it to us by the next day?

Tom asked Mary Martinson if ES&S can be contacted in the event of a problem. Mary responded that ES&S programmed the touchscreen memory cards. One of the cards was bad and they received a new card the next day. Additionally, one of the servers didn't work and a new one was delivered. Mary thinks that ES&S will do what they need to do to support Pima County, but Pima County will need to pay for that. Tom asked if Mary could research the level of warranty and support at no charge that comes with the new system. Barbara pointed out that ES&S representatives were on-hand for the City's election in the event that any problems arose and were very knowledgeable. Bill Beard added it would be good to know the expected life of the equipment; Brian Bickel added that it would be good to know how long the software will be supported and drew on the example of Windows XP that half the world still uses but that is no longer supported by Microsoft. Arnie asked about how security updates are handled, which is a particular vulnerability. Tom said any software change requires certification, which is an involved process.

Mary said the L&A tests were fine. Chris Cole responded that the L&A tests use a limited number of ballots, and if there was a planned subversion of the system, it could be programmed to start cheating after "X" number of ballots. Barbara replied that there is the L&A test at the end.

There was discussion of the certification process. Arnie said the Federal certification is mainly focused on encryption. Tom added that in the past, Federal certification has not focused on security. State certification is mainly a rubber stamp as they do not have the resources to put the equipment through rigorous testing.

ITEM 8. NOVEMBER ELECTION UPDATE – Brad Nelson

Mary Martinson reported that early ballots went out last week; the first turnover will be delivered today which will be approximately 15,000. Sample ballots began mailing on October 13 to households that weren't getting an early ballot. Also, Karen Schutte will be appointed to the Accuracy Certification Board on October 20th.

Bill Beard asked Mary if she had heard anything on mailing of the City of Tucson booklet. Mary responded that she has not heard. Bill then asked if a date had been set for the hand count audit, assuming that goes through; Mary said it would be on the Saturday after the election, November 7.

Brian Bickel asked how the City ballots are being handled. Mary responded that the City's election is on the County ballot. Brian followed up with the question about whether all City of Tucson ballots would be mailed, or would non-PEVL voters have to go to the polling place? Mary responded that voters who are not on PEVL or have not requested an early ballot will go to the polling place. Voters who live in the City of Tucson will have the City election and the County election on their ballots. The sample ballot will include a photo copy of the ballot that will be issued at the polling place. City voters were notified in the Primary that if they want to receive an early ballot, they will need to request it. The deadline to request a mail ballot is October 23. Karen mentioned she had heard some public service announcements.

ITEM 9. EARLY BALLOT AUDIT WITH BALLOT IMAGES – Tom Ryan

Tom had a conversation with Supervisor Bronson about when the EIC should bring this to the Board, and she suggested the first Board meeting in December.

ITEM 10. SECRETARY OF STATE *PROCEDURES MANUAL REVISIONS* UPDATE – Brad Nelson

Mary reported that there was a meeting held in mid-September for election officials for the first seven chapters. There are to be additional meetings, but there has been no word on when that will happen. The *Manual* needs to be finalized the first part of January and then it goes to the AG's office. It needs to be finalized in time for the PPE.

ITEM 11. SECRETARY OF STATE ELECTION LAW CHANGES UPDATE – Bill Beard / Beth Borozan

No updates to report.

ITEM 12. UPDATE ON NEW TABULATING EQUIPMENT – Brad Nelson

Mary reported that in-house testing is going well and vendor reps will be present the day prior to the election, on Election Day and the day after in case something happens and we need help. Brian asked when early ballots begin to be counted; Mary responded it is the 28th. Brian asked what happens in the event of a problem while counting early ballots; Mary responded they will stop, call the vendor, and someone will come. The equipment is superfast, but they want to begin counting early. In case there is a problem, they want to have the time to bring someone in.

ITEM 13. BYLAWS REVISIONS – Chris Cole

Brian Bickel noted that the current version of the Bylaws has all changes incorporated in it. Tom said the Commission had discussed through Article VIII, and will begin at Article IX. [A copy of the current strikeout version of the Bylaws is incorporated in the Minutes as Attachment 4].

The Commission members went through all changes from Article IX for concurrence or change. Section 7 of Article IX will be clarified.

The revisions will be made and reviewed again during the December 2015 meeting.

ITEM 14. FUTURE AGENDA ITEMS

During Item 6, agenda items were discussed for the meeting with the Secretary of State staff.

In addition, Barbara would like to have a review of the November 3, 2015 election, including a review of how the new equipment performed.

ITEM 15. NEXT MEETING DATES

The next meeting date will be November 20, 2015.

ITEM 16. ADJOURNMENT

It was moved by Matt Smith and seconded by Barbara Tellman and unanimously carried to adjourn the meeting. The meeting adjourned at 10:40 a.m.

ATTACHMENT 1

ELECTION INTEGRITY COMMISSION

Pima County, Arizona

TO: Honorable Sharon Bronson, Chair
Pima County Board of Supervisors

FROM: Tom Ryan, Chair 
Election Integrity Commission

DATE: September 28, 2015

RE: Recommendation for Hand Count Audit Following November County Bond
and City Election

The upcoming November 3 election, to be conducted by Pima County Elections, combines county bond issues with City of Tucson Mayor and council races and city propositions. Currently there is no plan to do a post-election hand count for any of these issues and races since the state law on hand count audits for elections does not apply to non-partisan and local elections.

The Pima County Election Integrity Commission recommends, by a unanimous vote, that a post-election hand count be performed for this election. The Commission recommends this hand count audit for three reasons:

1. Pima County has recently purchased new election equipment and this is the first election that will employ that equipment. Since we have no track record with this equipment, we need to establish the integrity of the tabulation process. This will also provide a better opportunity to become familiar with the new system and its peculiarities.
2. The proposed hand count is consistent with the City of Tucson's standard practice of doing a limited hand count for their elections. The City conducted a hand count for the primary election.
3. We wish to avoid or at least reduce the likelihood of expensive legal proceedings that might arise from distrust of the election system. We recall the cases arising from the 2008 RTA bond election and do not wish a recurrence.

There is nothing in state law to preclude the County from doing a voluntary hand count.

The hand count we recommend would follow the prescription provided in state law and the Secretary of State's Election Procedures Manual, modified as needed for this election's unique circumstances. In this case we would hand count one bond issue, one city council race, and one city proposition, selected randomly. The selected races would be hand counted for ballots cast in 4% of the precincts (about 8) and 1% of the early ballots selected randomly in the manner used in previous elections. As with regular audited elections, the hand count will occur only if a sufficient number of volunteers are available. These hand counters will be paid the usual stipend of \$75. The total cost has been estimated at \$4,500.

Please add this topic to the agenda for the October 6, 2015 Board meeting for discussion and action.

cc: Chuck Huckelberry, Pima County Administrator
Robin Brigode, Clerk of the Board
Roger Randolph, City Clerk



MEMORANDUM

Date: October 8, 2015

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator *CHH*

Re: **Hand Count Audit - November 3, 2015 Election Results for the Pima County Bond Propositions**

As directed by the Board of Supervisors, I have asked that Arizona Attorney General Mark Brnovich provide clarification of State law regarding a hand count audit of the November 3, 2015 County Bond Election (Attachment 1). I have corresponded with the Arizona Secretary of State regarding this same subject (Attachment 2).

These letters request timely clarification regarding whether conducting a hand count audit of County bond election results would be a violation of State law and subject county officials to criminal penalties if conducted. As can be seen in the letter to Mr. Brnovich, I have attached a previous County Attorney Legal Opinion regarding same that indicates such is, in their opinion, precluded. This opinion dates from 2008 therefore this is not a new issue.

I have asked the County Attorney and the Clerk of the Board to place this item on the October 20, 2015 Board of Supervisors agenda, since that is the last Board meeting to occur before the November 3, 2015 election and will be the last opportunity to provide direction to staff on conducting a hand count audit of the County bond election results.

Staff would like to proceed with a hand count audit; however, we do not wish to subject the Board to a violation of State law and associated exposure to criminal penalties.

I do not recommend a hand count audit of the County bond election results unless it is clear the Board and the County will not be subject to prosecution and/or penalties for any violation of State law.

CHH/anc

Attachments

c: Thomas Weaver, Chief Civil Deputy County Attorney
Ellen Wheeler, Assistant County Administrator
Brad Nelson, Director, Elections Department
Chair and Members Election Integrity Commission

**COUNTY ADMINISTRATOR'S OFFICE**

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

October 6, 2015

The Honorable Mark Brnovich
Arizona Attorney General
1275 W. Washington Street
Phoenix, Arizona 85701-1367

Re: **Request for Legal Opinion Regarding Hand Count of Local Elections**

Dear General Brnovich:

The Pima County Board of Supervisors met today and requested an opinion from the Attorney General regarding the permissibility of a hand count audit of the County's November 3, 2015 Bond Election, as well as mayor and council races for the City of Tucson (a charter city) and the Town of Oro Valley recall election. If the County were to conduct this hand count, would Pima County be in violation of A.R.S. § 16-602(B)(2)(f)? That statute states in part:

"If there are no contested races as prescribed by this paragraph, a hand count shall not be conducted for that precinct for that election."

As you know, Pima County is not a charter county. We are a political subdivision and as such can take only those actions authorized by State law. See attached Pima County Attorney Opinion 08-03, A.R.S. § 16-602(B) and the referenced procedures established by the Secretary of State are silent regarding conducting a hand for local elections; however, a reading of Paragraph F cited above could be construed to preclude such. A violation of this section of State law could constitute a Class 6 felony, A.R.S. § 16-1010, and a violation of the Arizona Elections Procedures Manual could constitute a Class 2 misdemeanor, A.R.S. § 16-452(C). Accordingly, we will not proceed with a hand count audit of the local elections without guidance from your office.

The Honorable Mark Brnovich
Re: Request for Legal Opinion Regarding Hand Count of Local Elections
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We have also requested guidance from the Arizona Secretary of State concerning the Arizona Elections Procedures Manual. The Arizona Elections Procedures Manual also appears silent on such and prescribes hand count audits only for national or state elections, not local elections. Ariz. Sec'y of State, *Arizona Elections Procedures Manual*, at 189 (2014). However, it also states, "If there are no contested races in any of the designated categories, no hand count will take place." *Id.* at 193.

Pima County has an Election Integrity Commission (EIC), and the EIC's recommendation to the Board of Supervisors is attached for your information. We are in agreement with the EIC recommendation, provided we can conduct such a hand count audit without violating State law. Our elected officials need to be sure they will not be prosecuted for a hand count audit of the local elections.

We ask for your expedited review of this matter so we may plan for the hand count audit following the November 3, 2015 election.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/anc

Enclosure

- c: The Honorable Chair and Members, Pima County Board of Supervisors
The Honorable Barbara LaWall, Pima County Attorney
Thomas Weaver, Chief Civil Deputy Pima County Attorney
Chair and Members, Pima County Election Integrity Commission



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Barbara LaWall
 PIMA COUNTY ATTORNEY

OPINION NO. 08-03

To: C.H. Huckelberry, County Administrator

From: Christopher Straub, Chief Civil Deputy County Attorney
 Daniel Jurkowitz, Deputy County Attorney

Date: October 24, 2008

Subject: *Hand Count Audit Requirements*

Arizona counties use computerized elections systems for counting ballots. In 2006, the Legislature amended A.R.S. § 16-602 to establish a hand count audit procedure "[f]or each countywide primary, general and presidential preference election" to ensure the integrity of the electronic vote tabulating process. 2006 Ariz. Sess. Laws, ch. 394, § 5. You have asked six specific questions relating to the hand count audit of election results authorized by A.R.S. § 16-602. This Opinion will set forth each of your questions and the answers thereto in the order you have presented them.

- 1. Can local contested races be subject to the hand count audit, for example, contested races for the Board of Supervisors or any other local office that may be on the General Election Ballot?**

The hand count audit procedures are set forth in detail in A.R.S. § 16-602. Subsection (C)(2) of that statute specifies the races that are subject to the hand count audit:

2. The races to be counted on the ballots from the precincts that were selected pursuant to paragraph 1 of this subsection for each primary and general election shall include up to five contested races. After the county recorder or other officer in charge of elections separates the primary ballots by political party, the races to be counted shall be determined by selecting by lot without the use of a computer from those ballots as follows:

- (a) For a general election, one statewide ballot measure, unless there are no measures on the ballot.
- (b) One contested statewide race for statewide office.

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(c) One contested race for federal office, either United States senate or United States House of Representatives. If the United States House of Representatives race is selected, the names of the candidates may vary among the sampled precincts.

(d) One contested race for state legislative office, either state house of representatives or state senate. In either case, the names of the candidates may vary among the sampled precincts.

(e) If there are fewer than four contested races resulting from the selections made pursuant to subdivisions (a) through (d) and if there are additional contested federal, statewide or legislative races or ballot measures, additional contested races shall be selected by lot not using a computer until four races have been selected or until no additional contested federal, statewide or legislative races or ballot measures are available for selection.

(f) If there are no contested races as prescribed by this paragraph, a hand count shall not be conducted for that precinct for that election.

In addition to the four races described above, Subsection (C)(5) states: "[i]n elections in which there are candidates for president, the presidential race shall be added to the four categories of hand counted races."

Generally, "[t]he only powers possessed by boards of supervisors are those expressly conferred by statute or necessarily implied therefrom." *Bd. of Supervisors of Apache County v. Udall*, 38 Ariz. 497, 506, 1 P.2d 343, 347 (1931); *Hounshell v. White*, 522 Ariz. Adv. Rep. 27, ¶ 19, 175 P.3d 65, 69 (App. 2008). This is particularly true regarding election matters. See *Barrera v. Superior Court*, 117 Ariz. 528, 573 P.2d 923 (App. 1977) (There is no authority to recount an election absent a specific statute authorizing such recount.)

In this case, there is no express statutory authority enabling the Board of Supervisors to audit a local race, nor is there anything to indicate that this might be an implied power. Rather, the Legislature's decision to include in A.R.S. § 16-602 only certain specific races demonstrates the Legislature's intent to exclude all other races from the hand count audit. *In re Estate of Agans*, 196 Ariz. 367, 370, ¶ 16, 998 P.2d 449, 452 (App. 1999). ("[t]he expression of one or more items in a class generally indicates an intent to exclude all items of the same class that are not expressed.") Here the Legislature's intent to exclude local races is reinforced by the prohibition in Subsection (C)(2)(f) on hand counts for a particular precinct "[i]f there are no contested races as prescribed by this paragraph." (Emphasis added.)

Pursuant to A.R.S. § 16-452(A),¹ the Secretary of State has adopted an Election

¹ This statute reads in pertinent part: "A. After consultation with each county board of supervisors or other officer in charge of elections, the secretary of state shall prescribe rules to achieve and maintain the

Procedures Manual ("the Manual") which has been approved by the Governor and the Attorney General pursuant to A.R.S. § 16-452(B). Failure to comply with the Manual is a class 2 misdemeanor. A.R.S. § 16-452(C). The Manual provides additional detail regarding the manner in which the hand count audit is to be performed. Pages 217-242 of the Manual describe the selection of races to be hand counted from the randomly selected precincts. The Manual specifically provides:

"1. Determine the race categories available for this election. The possible race categories shall be Presidential Elector, Statewide Candidate, Federal Candidate, State Legislative, and Ballot Measure."

ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL 221 (Oct. 2007) (emphasis supplied).

The Secretary of State's interpretation would be entitled to deference by a court. See *Kahn v. Thompson*, 185 Ariz. 408, 916 P.2d 1124 (App. 1995) (the interpretation given to a statute by the officers charged with its implementation should be given great weight and deference). Therefore, local races are not included in the possible race categories for a hand count audit.

Arizona is a "covered jurisdiction" under Section 5 of the federal Voting Rights Act. A change to any "...practice or procedure with respect to voting..." first must be "precleared" by the U.S. Department of Justice under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c. A change would specifically include any change concerning counting of votes or in the method of determining the outcome of an election. 28 C.F.R. § 51.13 (2008).² Both A.R.S. § 16-602 and the Manual have already been submitted to and precleared by the Department of Justice. Because the results of a hand count audit could constitute the official count for a race, A.R.S. § 16-602(F), any change to the existing hand count procedure as specified in either statute or in the Manual would require additional preclearance from the Department of Justice.

- 2. What [is] the proper number of precincts to be audited, and can the Board of Supervisors, by administrative directive or approved motion, require that twice the number of precincts allowed by state law be subject to hand count audit?**

"At least two per cent of the precincts in that county..." shall be subject to the hand count

maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots

B. Such rules shall be prescribed in an official instructions and procedures manual to be issued not later than thirty days prior to each election. Prior to its issuance, the manual shall be approved by the governor and the attorney general. . . .

C. A person who violates any rule adopted pursuant to this section is guilty of a class 2 misdemeanor."

² Violations of the Voting Rights Act are enforceable by the U.S. Attorney General and may result in both civil and criminal sanctions. 42 U.S.C. § 1973j.

audit. A.R.S. § 16-602(C)(1). Two per cent is the minimum number of precincts that must be audited. The Board of Supervisors, however, has authority to audit more than two percent of precincts and could require that four per cent of precincts be audited in the hand count.³

The Board of Supervisors, pursuant to A.R.S. § 16-411, has established 417 precincts in Pima County. Two percent of 417 would be 8.34 and four percent would equal 16.68. The Secretary of State's Election Procedures Manual states:

At least two per cent of the precincts in the county...shall be selected at random from a lot consisting of every precinct in that county. A county shall round to the nearest whole number for the number of precincts to hand count.

ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL 219 (Oct. 2007).

Applying this provision of the Manual to Pima County's 417 established precincts yields the following results: two percent of the precincts equal 8 precincts and four percent of precincts equal 17.

The Manual, however, further provides:

For any election where there are consolidated polling locations, the amount of precincts to hand count will be based on the number of active polling locations for that election. . . . Precincts without any registered voters shall be excluded from the pool of available precincts in the county.

Id. at 219-220. While there are 417 designated precincts in Pima County, there is one precinct without registered voters and only 373 actual polling locations. Two per cent of the resulting number is 7.44. Rounding to the nearest whole number, the Secretary of State would require that the County audit at least 7 precincts, but the County could choose to audit more. In fact, the Board of Supervisors has decided that four percent of precincts shall be audited for each election. This being the case, 15 precincts would be subject to the hand count audit.

Because the number of polling locations in Pima County is less than the number of precincts, the number of precincts to be audited will be different depending upon whether the dictates of A.R.S. § 16-602(C)(1) are followed or whether the Manual's directives are followed. The officer in charge of elections could rely on the statute alone in calculating the minimum number of precincts to audit because the County can always choose to audit more than the minimum number of precincts, regardless of how that number is calculated. Using the lower minimum number of precincts as required by the Manual, however, makes it more likely that a hand count audit will go forward. This is because it is more likely that the resulting lower number of necessary Hand Count Board members, as discussed in the next section of this Opinion, will in fact "arrive to perform the hand count," A.R.S. § 16-602(C)(7). It would also eliminate the possibility of selecting precincts with no voters.

³ On July 1, 2008, the Board of Supervisors approved the County Administrator's recommendation to "double the number of precincts for hand counting verification over the minimum prescribed by law."

3. What specific number of Party designated hand count auditors are required to conduct the hand count audit for precincts selected, and does the law prohibit the discretion of the Parties regarding conducting the hand count audit with fewer Party representatives than specified, even though there is agreement and consensus among the Parties to conduct the audit?
4. If the specified number of party observers fail[s] to appear for the hand count audit, can the hand count audit be conducted?

These questions concern the same subject matter and therefore merit a single response. The minimum number of hand count auditors required to complete the hand count audit is set forth in A.R.S. § 16-602(C)(7) which states in pertinent part:

For each precinct that is to be audited, the county chairmen shall designate at least two board workers... If there are less than two persons for each audited precinct available to participate on behalf of each recognized political party, the recorder or officer in charge of elections, with the approval of at least two county party chairpersons in the county in which the shortfall occurs, shall substitute additional individual electors who are provided by any political party from anywhere in the state without regard to party designation to conduct the hand count... If the total number of board workers provided by all parties is less than four times the number of precincts to be audited, the recorder or officer in charge of elections shall notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding the election. The hand count shall not proceed unless the political parties provide the recorder or officer in charge of elections, in writing, a sufficient number of persons by 5:00 p.m. on the Thursday preceding the election and a sufficient number of persons, pursuant to § 16-602, subsection C, paragraph 7, arrive to perform the hand count.

The Manual similarly provides:

For each precinct that is to be audited, the County Political Party Chairmen shall designate in writing at least two Hand Count Board members to the County Officer no later than 5:00 p.m. on the Tuesday preceding the election. The County Political Party Chairman shall also designate an appropriate number of alternative Hand Count Board members.

If the total number of Hand Count Board members provided on the lists from all the County Political Party Chairmen is less than four times the number of precincts to be audited, the Election Official shall notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding the election.

The hand count shall not proceed unless the political parties provide the County Officer, in writing, a sufficient number of persons by 5:00 p.m. on the Thursday preceding the election.

The hand count may not proceed unless the County Political Party Chairmen from two different recognized political parties participate in the hand count. For the hand count to proceed, no more than 75 per cent of the persons performing the hand count shall be from the same political party.

* * *

If less than four Hand Count Board members per precinct fail to appear to perform the Precinct Hand Count and Early Ballot Audit, no hand count will be conducted and the electronic tabulation is deemed the official count. [A.R.S. § 16-602(C)].

ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL 226 – 227 (Oct. 2007).

Therefore, according to both the applicable statute and the Manual, the minimum number of hand count auditors must equal four times the number of precincts to be audited. Moreover, the hand count audit cannot proceed absent the minimum number of hand count auditors prescribed by both the statute and the Manual.

With one possible exception, these mandates may not be altered by agreement of the political parties. As previously noted in response to Question 1, there is no authority allowing the officer in charge of elections to deviate from the statutory scheme, particularly with respect to the counting of ballots. *Barrera v. Superior Court*, 117 Ariz. 528, 573 P.2d 923 (App. 1977).⁹ And, we are unaware of any attempt by the Division of Elections to obtain preclearance from the Department of Justice under Section 5 of the Voting Rights Act for any alternative procedures with respect to the hand count audit.

The only exception to this rule would be in those cases where the Board of Supervisors has authorized *more* than two per cent of precincts to be audited, but only a number of hand count auditors equal to at least four times the number of those required to audit two percent of precincts "arrive to perform the hand count." A.R.S. § 16-602(C)(7). This is because A.R.S. § 16-602(C), read in its entirety, appears to mandate that a hand count of two percent of precincts must go forward if the minimum prerequisites are met.

5. **Can other precincts be selected for hand counting after the drawing of selected precincts if those precincts are found to have some form of defect such as a seal that has been changed or does not match other documentation?**

⁹ It should also be noted that a failure to comply with elections statutes subjects the officer in charge of elections to potential criminal penalties. See, e.g., A.R.S. §§ 16-452(C) (violation of a rule contained in the Secretary of State's procedures manual constitutes a class 2 misdemeanor), 16-1009 (knowingly failing to perform a duty in the manner prescribed by law constitutes a class 3 misdemeanor), 16-1010 (knowingly failing to perform a duty or violating a provision of election law constitutes a class 6 felony unless a different punishment for such act is prescribed by law).

The manner in which precincts are to be selected for the hand count audit is set forth in A.R.S. § 16-602(C)(1) which states:

1. At least two per cent of the precincts in that county, or two precincts, whichever is greater, *shall be selected at random from a pool consisting of every precinct in that county.* The county political party chairman for each political party that is entitled to continued representation on the state ballot or the chairman's designee shall conduct the selection of the precincts to be hand counted. The precincts *shall be selected by lot* without the use of a computer, and the order of selection by the county political party chairmen shall also be by lot. The selection of the precincts shall not begin until all ballots voted in the precinct polling places have been delivered to the central counting center. The unofficial vote totals from all precincts shall be made public before selecting the precincts to be hand counted. Only the ballots cast in the polling places and ballots from direct recording electronic machines shall be included in the hand counts conducted pursuant to this section. Provisional ballots, conditional provisional ballots and write-in votes shall not be included in the hand counts and the early ballots shall be grouped separately by the officer in charge of elections for purposes of a separate manual audit pursuant to subsection G of this section. (Emphasis added.)

The Manual similarly provides:

The County Political Party Chairmen shall conduct the selection of the precincts to be hand counted. *The precincts shall be selected by lot* without the use of a computer and the order of selection by the County Political Party Chairmen shall also be by lot. The County Officer and the County Political Party Chairmen shall agree to the lot method.

The selection of the precincts shall not begin until all ballots voted in the precinct polling places have been delivered to the central counting center. The unofficial vote totals from all precincts shall be made public before selecting the precincts to be hand counted. The selection of precincts shall occur prior to the selection of the races to be counted.

At least two percent of the precincts in the county or two precincts, whichever is greater, shall be selected at random *from a lot consisting of every precinct in that county.* A county shall round to the nearest whole number for the number of precincts to hand count.

For any election where there are consolidated polling locations, the amount of precincts to hand count will be based on the number of active polling locations for that election.

ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL 219 (Oct. 2007) (emphasis added).

The specified procedure for selecting precincts is as follows:

The process for selecting the precincts for Primary and General Elections is:

- 1. Determine Selection Order.** Select by lot the order in which the County Political Party Chairman shall choose. The selection order will apply for the entire hand count process.
- 2. Create Lot.** Create a lot containing all precincts.
- 3. Select Precincts.** Draw the required two per cent or two precincts to be counted *among a lot containing every precinct in the county*. Precincts without any registered voters shall be excluded from the pool of available precincts in the county. The County Political Party Chairmen shall alternate selecting precincts based on the order defined in step one from the lot until the required number of precincts is selected.
- 4. Record Precincts.** The County Officer shall record the precincts to be hand counted in Section A of the Master Precinct and Race Selection Worksheet. The precincts shall be listed in order selected. The order of the precincts shall be used when selecting the contested races in section VI of this procedure.

ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL 219-220 (Oct. 2007)
(emphasis added.)

As the emphasized language indicates, every eligible precinct must be included in the lot of precincts subject to the random selection. If the Legislature had intended a different result, it could have specifically provided that precincts with certain anomalies would not be included in the hand count audit. The fact that such exclusions do not appear in the statute is consistent with the Legislature's intent to ensure the ballots from all precincts are subject to random inspection. Otherwise, the very purpose of the random audit might be defeated because those persons intent on tampering with election results would have an incentive to cause the disqualifying anomalies in certain precincts, thereby preventing the hand counting of ballots cast in those precincts.

- 6. What is the authority of the Elections Director to conduct the hand count process and maintain order and control of the process to ensure that it is accomplished in an accurate manner?**

The officer in charge of elections, currently in Pima County the Elections Director, has authority to "...prohibit persons from participating in the hand count if they are taking actions to disrupt the count or are unable to perform the duties as assigned." A.R.S. § 16-602(C)(7). The Secretary of State's Election Procedures Manual expands this authority:

The County Officer has the right to remove any Hand Count Board member they deem to be disruptive to the hand count process. The County Officer may prohibit persons from participating in the hand count if they are taking actions to disrupt the count or are unable to perform the duties as assigned.

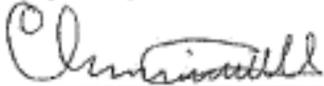
ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL 227 (Oct. 2007).

Conclusion.

The questions you have presented have been clearly addressed in the statutes and in the Secretary of State's Election Procedures Manual. It is the unambiguous intent of the Legislature that elections are to be conducted with "the maximum degree of correctness, impartiality, uniformity and efficiency." See, e.g., A.R.S. §16-452(A). Deviation from the statutes and the Manual, for whatever reason, that contravene that intent or that result in procedures that have not been precleared by the Department of Justice are generally impermissible.

Please let us know if you have any additional questions or concerns regarding this matter.

Respectfully,



Christopher Straub
Chief Civil Deputy County Attorney



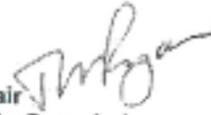
Daniel Jurkowitz
Deputy County Attorney

cc: Barbara LaWall, Pima County Attorney
Amelia Cramer, Chief Deputy County Attorney
Brad Nelson, Director, Division of Elections

ELECTION INTEGRITY COMMISSION
Pima County, Arizona

TO: Honorable Sharon Bronson, Chair
Pima County Board of Supervisors

FROM: Tom Ryan, Chair
Election Integrity Commission



DATE: September 28, 2015

RE: Recommendation for Hand Count Audit Following November County Bond and City Election

The upcoming November 3 election, to be conducted by Pima County Elections, combines county bond issues with City of Tucson Mayor and council races and city propositions. Currently there is no plan to do a post-election hand count for any of these issues and races since the state law on hand count audits for elections does not apply to non-partisan and local elections.

The Pima County Election Integrity Commission recommends, by a unanimous vote, that a post-election hand count be performed for this election. The Commission recommends this hand count audit for three reasons:

1. Pima County has recently purchased new election equipment and this is the first election that will employ that equipment. Since we have no track record with this equipment, we need to establish the integrity of the tabulation process. This will also provide a better opportunity to become familiar with the new system and its peculiarities.
2. The proposed hand count is consistent with the City of Tucson's standard practice of doing a limited hand count for their elections. The City conducted a hand count for the primary election.
3. We wish to avoid or at least reduce the likelihood of expensive legal proceedings that might arise from distrust of the election system. We recall the cases arising from the 2006 RTA bond election and do not wish a recurrence.

There is nothing in state law to preclude the County from doing a voluntary hand count.

The hand count we recommend would follow the prescription provided in state law and the Secretary of State's Election Procedures Manual, modified as needed for this election's unique circumstances. In this case we would hand count one bond issue, one city council race, and one city proposition, selected randomly. The selected races would be hand counted for ballots cast in 4% of the precincts (about 8) and 1% of the early ballots selected randomly in the manner used in previous elections. As with regular audited elections, the hand count will occur only if a sufficient number of volunteers are available. These hand counters will be paid the usual stipend of \$75. The total cost has been estimated at \$4,500.

Please add this topic to the agenda for the October 6, 2015 Board meeting for discussion and action.

cc: Chuck Huckelberry, Pima County Administrator
Robin Brigode, Clerk of the Board
Roger Randolph, City Clerk

SEP 28 15 15:54:12 JPC CLK OF RD




COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

October 6, 2015

The Honorable Michele Reagan
Arizona Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, Arizona 85007

Re: **Request for Legal Opinion Regarding Hand Count of Local Elections**

Dear Secretary Reagan:

Please find enclosed my October 6, 2015 request of Attorney General Mark Brnovich for a legal opinion regarding the permissibility of a hand count of local elections.

The Pima County Board of Supervisors is also requesting your office's review and guidance regarding this subject, as the Arizona Elections Procedures Manual prescribes hand count audits only for national or state elections, not local elections.

We would appreciate receiving your guidance as soon as possible to facilitate planning for a hand count audit.

Sincerely,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry", is written over a large, sweeping flourish that extends to the right and then curves back down and left.

C.H. Huckelberry
County Administrator

CHH/mjk

Enclosure

ES&S SECURITY QUESTIONS FOR VENDOR

Revised 07/15/15

Answers provided as of 08/11/15

Karen Schutte:

- My question was whether or not the communication software and hardware is installed regardless, since we are not using it? If yes, can we deactivate it?

DS200 communications is performed using an optionally installed hardware module and requires a different DS200 software/firmware version to be installed as well. If both of these are not installed, then communications is not possible. In addition, the election definition must be configured with the correct option enabled, an additional security password defined, and the appropriate configuration data defined. If all of these are not configured and defined, then communications is not possible. In addition, the system does not allow communications during the scanning and tabulation processes. Communications is only enabled and possible for a very short window of time after polls are closed.

Arnie Urken:

- ES&S told us they hire an outside company to test security by trying to break into their system. I recall that they said that they employ the same company used by Lockheed Martin. What is the name of the company?

One of the initial security assessments of design and development of our voting systems was performed by an independent third party, Continuum Security Solutions. See reply below for ongoing testing activities.

- Is such "red team" testing done continuously or periodically? Does it include social engineering as well as attempts to break encryption systems? How would ES&S know if an encryption code had been broken?

The ES&S systems allow a county to canvass and audit the results on their own. Paper ballots are available to compare against the tabulated results at the scanner. Scanner reports are available to double-validate results reported at the central results reporting systems. Each and every release is submitted to a federally accredited voting systems laboratory, who will perform source code, security reviews and extensive testing.

- Does ES&S monitor the social and financial activities of engineers and others who might be vulnerable to outside manipulation?

ES&S performs a security background check and screening of each and every person as they are hired into the Company. ES&S does not monitor the ongoing social and financial activities of our personnel. ES&S maintains a strict separation of duties with regard to creation, build, and distribution of products and product versions. While engineers are able to change and enhance functionality for new products and versions, that is all they can do. Engineers cannot build production level products and cannot distribute products to the field. Different staff performs product builds, code is further reviewed by external parties, who then perform independent trusted builds of such code from the ground up, and products versions are then distributed by entirely separate parts of the organization.

ES&S and its Associates are strictly forbidden from engaging in politics, endorsing political candidates or parties, or making any political contributions for or on behalf of the Company. In addition, subject to applicable law, any Associates in the position of Vice President or above are strictly forbidden from directly or indirectly endorsing political candidates or parties, or making political contributions to any candidates, political parties, or election issues, or causes.

- How are updates handled to enhance security? What media and protocols are used to preserve code integrity?

Updates to enhance security or functionality are all internally tested by the ES&S Quality Assurance department and the ES&S Pre-Certification department. Then all such updates are reviewed by a federally accredited voting systems test laboratory (VSTL). The VSTL performs code reviews and then creates a trusted build using the reviewed code. Using the trusted build, the VSTL then performs rigorous functionality, load, stress, accuracy and security testing. All tests must be passed successfully before the release is provided to states and county customers, whereupon additional testing or evaluation may occur per each state's certification policies and practices.

- Does ES&S collect systems performance metrics that include aggregated statistics by voter type (mail ballot, precinct number)?

ES&S does not collect this type of information.

- If these types of data are collected, does ES&S destroy the data once users have completed an election? Are backups of election reports saved on disk or remotely that enable ES&S to compare elections over time, say Pima County school elections or Presidential elections?

This is not a service that ES&S performs. While the ES&S voting systems do create a wealth of log data, log files, and reports, such data is retained by customers and not typically sent to ES&S unless assistance in the review of the information is requested.

- Are users (voters or governments) protected by a statement of user rights?

ES&S provides an initial warranty and additional maintenance and support services that can be optionally purchased in support of our equipment.

- What happens if machine or system failure requires the County to rerun an election?

The ES&S systems are very reliable and extremely accurate. Customers can optionally purchase spare equipment that can be used and swapped in quickly if under a very rare circumstance that there is a failure of a specific machine in an election.

- Who pays?

We have not seen such an occurrence and do not expect this in the future.

- Does ES&S hold or offer insurance to deal with system failures?

ES&S does not offer insurance. ES&S is in the business of working with our customer base to conduct successful elections. We make things right for our customers.

- How does ES&S inform systems users about best practices, alerts, current challenges, and future security goals?

ES&S provides initial training and refresher training services. Best practices are documented and published in Product Advisory Notices (PANs). These PANs are provided to customers as necessary. ES&S also maintains a Customer Portal where product documentation and PANs can be accessed by our customers. ES&S also has Customer Service personnel who work with customers on site, as well as a Customer Service Help Desk that our customers can use to get advice and best practice information.

- How does ES&S integrate ideas for security into product/service development?

New ideas are continuously woven into product roadmaps and development plans. ES&S creates new version and upgrades in product releases periodically, but typically around once a year. These releases must go through

the federal and state certification processes before they would be released in a particular state. ES&S has on staff security trained and credentialed experts, who are involved in the design and development of the voting systems.

Tom Ryan:

- Is it possible for a central count computer user (county employee) to modify the election database manually?

No. It is not possible for a central count scanner operator to modify the election data on the system.

- If so, under what conditions? And is the action logged?

The central results reporting system, Election Results Manager (ERM), does have a facility to enter data manually. Access to this feature requires user authentication and only those users who have been given rights to this application can use it. This ERM manual entry facility has an integrated audit log built into it. All entries and changes using the ERM manual entry facility would be logged into the immutable, time stamped event log.

- What is the format of the election database? Is there any database file encryption? Other than the EMS, what software products would be capable of accessing the database?

The EVS system uses two databases. PostgreSQL is used for ElectionWare where the election definition is created. The Liant RM/COBOL ISAM database is used for ERM, where election results are stored. Both systems are locked down in hardened configurations so access to these databases outside of the ElectionWare and ERM applications is not possible.

Chris Cole:

- Can the memory card be programmed by the local people and if so can votes be switched?

Memory cards can be programmed by local elections staff. Votes cannot be switched. All data is only modifiable through the ES&S products, which all have integrated event audit logging facilities that cannot be worked around and are immutable.

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PIMA COUNTY
ELECTION INTEGRITY COMMISSION

BYLAWS

ARTICLE I
NAME

~~Section 1~~ The name of this organization shall be the Pima County Election Integrity Commission (EIC).

ARTICLE II
LEGAL REQUIREMENT

~~Section 1~~ The Pima County Election Integrity Commission ("EIC") was created by Board direction on July 1, 2008. The Commission will function under the authority of the above-mentioned resolution and other stipulations as stated in the Pima County Code.

ARTICLE III
FUNCTION and PURPOSE

~~Section 1~~ The Pima County Election Integrity Commission is chartered as an advisory group, reporting to the Pima County Board of Supervisors. The purpose is to help improve the conduct of elections by examining the systems and processes behind them in order to improve functioning of and public trust in the Pima County electoral process.

ARTICLE IV
MEMBERSHIP, APPOINTMENTS and QUALIFICATIONS

~~Section 1~~ ~~In accordance with direction by the Pima County Board of Supervisors EIC shall be composed as defined in Section 2.~~

~~Section 21~~ ~~APPOINTMENT-Voting~~ Each members of the Pima County Board of Supervisors shall each appoint one (1) member to the EIC. The Pima County Administrator shall appoint one (1) member to the EIC. ~~In addition,~~ Each political party, recognized by Pima County, shall appoint one member. All appointments are ~~to be ratified~~ approved by the Pima County Board of Supervisors.

~~Section 32~~ ~~QUALIFICATIONS-The membership of the Commission must be composed of residents of Pima County.~~ Each voting member of the EIC shall be a resident of Pima County and a registered County voter.

~~Section 43~~ ~~NONVOTING MEMBERS-The Pima county shall appoint one (1) staff person to serve as an ex-officio, nonvoting member. The Director of the Pima County Election Department shall also be an ex-officio, non-voting member.~~

~~Section 54~~ TERMS:

a. The terms of members of the Commission ~~appointed by Pima County officials~~

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shall be two (2) years from the ~~time date~~ of that member's appointment ~~as is~~ ~~retified~~ **approved** by the Pima County Board of Supervisors. ~~Such members may be removed with or without cause prior to the expiration of their term by the County Board of Supervisors who appointed them or by their successor in office.~~

- b. ~~The terms of members appointed by political parties shall be for two (2) years.~~
- b. **Members may be removed with or without cause by the person or party that appointed them or the successor to that person.**
- c. Upon the expiration of an appointment a member of the EIC may be reappointed or replaced by the ~~appropriate~~ **appropriate** appointing official **or party**. **There is no limit on the number of terms a Commissioner may serve.** In no case may a member serve if his or her appointment has expired.

Section ~~45~~ **REMOVAL:**

- a. ~~The appointment of an EIC member who fails to attend~~ **If a voting member misses** four (4) consecutive regularly scheduled meetings ~~and/or who fails to attend at least~~ **forty percent (40%) of the regularly scheduled meetings called** in a calendar year ~~will be terminated~~ **the EIC may remove that member by majority vote. Such vote shall be placed on the agenda of the first scheduled meeting after the criteria for removal are met. The person whose membership is in question shall be notified of the scheduled vote and shall be allowed to present a defense against removal. A two-thirds vote of eligible Commissioners shall be required for removal.**
- b. The EIC may by a two-thirds vote **of eligible Commissioners** recommend to the ~~appropriate governing body~~ **Pima County Board of Supervisors that a voting member be removed from the EIC for reasonable cause other than non-attendance.**

Section ~~76~~ **VACANCIES: Vacancies on the Commission** ~~If a vacancy occurs on the Commission for any reason, it shall be filled by appointment in the same manner in which members are initially appointed. and shall last for the duration of the unexpired term.~~

ARTICLE V
OFFICERS & ELECTIONS

- Section 1 The officers of ~~this Commission~~ **the EIC** shall ~~include~~ **be the** Chairperson and Vice Chairperson.
- Section 2 Two-thirds (2/3) of the **eligible Commissioners** ~~members~~ of the EIC who are appointed and qualified must be present to hold election of officers.

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Section 3 ~~An~~ The election ~~for of~~ officers ~~of the EIC shall be held each year~~ take place at the first meeting of the calendar year, at which the requirements in Section 2 above are met or as required to fill a vacancy.

Section 4 Each elected officer shall hold office until a successor is elected and qualified or the person holding the office is no longer a member of the EIC.

ARTICLE VI DUTIES of OFFICERS

Section 1 Chair shall:

- a. Preside at all EIC meetings and ensure meetings are in compliance with all governing rules.
- b. Ensure that ~~standing committees and other~~ ad hoc committees are established as needed ~~and chaired~~, and their tasks are expeditiously and effectively performed.
- c. Serve as an ex-officio member of all committees
- d. Shall be the spokesperson for the Commission unless the Chair designates another voting member due to circumstances.
- e. ~~Complete and~~ Submit the Annual Report to the Pima County Board of Supervisors.

Section 2 The Vice Chair shall:

- a. Perform the duties of the Chair ~~person during~~ in the absence of the Chair.
- b. Act ~~in as an advisory capacity~~ advisor to the Chair ~~person~~ and perform such ~~functions~~ additional duties as assigned by the Chair ~~person~~.

ARTICLE VII REMOVAL of OFFICERS FROM OFFICE

Section 1 ~~The EIC may by a two-thirds (2/3) vote of those~~ A quorum of eligible Commissioners appointed and qualified at any one time may decide by a two-thirds majority to remove any officer for reasonable cause. ~~Such action~~ A removal vote must be proposed at least one (1) regularly scheduled meeting prior to the scheduled vote.

ARTICLE VIII COMMITTEES

~~Section 1 All EIC meetings will be conducted in accordance with the Arizona Public Open Meeting Law, A.R.S. 38-431.~~

~~Section 2 a. Ad hoc committees may be designated as necessary by~~ The EIC may create ad hoc committees to assist in providing advice to the entire commission.

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~~Section 2 b. Such committees shall be composed of one or more EIC members~~

~~Section 3 e. Other interested citizens/residents may be appointed by the EIC to serve as members.~~

~~Section 4 d. Ad hoc committees will be dissolved upon the completion of their assigned task.~~

ARTICLE IX MEETINGS

Section 1 All EIC meetings will be conducted in accordance with the Arizona Public Open Meeting Law, A.R.S. 38-431.

Section ~~2~~ The EIC shall hold a minimum of 9 meetings per calendar year.

Section ~~3~~ A majority of the voting members eligible Commissioners of the EIC shall constitute a quorum for the conduct of general business.

~~Section 3.4 The act of a majority of the Commissioners present at a meeting at which there is a quorum shall be the act of the EIC unless the act of a greater number is required by law or by these bylaws.~~

Section 4 Member Commissioner decision-making actions will shall be governed by the provisions of the Arizona law on Conflict of Interest, A.R.S. 38-501.

Section 5 Proposing And Approving Agenda Items:

- a. The Chair and staff will shall send a proposed agenda to all Commissioners ~~EIC members~~ at least one week before the next prior to any regular scheduled meeting.
- b. ~~Agenda items can be proposed by a~~ Any Commissioner member, including the or non-voting members, may propose an item for the agenda. The proposal shall and be sent in person, by email or regular mail to the EIC staff and the Chair and Vice-Chair by email, regular mail or personal contact for approval. The Chair at his or her option may then approve or disapprove the proposed agenda item. The submission must be at least one week prior to any regular meeting. For emergency meetings, agenda items must be delivered 24 hours before the day of the proposed emergency meeting.
- c. If the Chair disapproves the agenda item, the Chair ~~must inform~~ shall notify the proposing Commissioner within one day of receipt. The proposing Commissioner can may then request an override of the Chair by notifying the Coordinator staff who obtains written or email support of shall then poll the remaining voting members of the EIC and if four (4) additional Commissioners members support the proposed agenda item it shall be placed on the agenda.
- d. ~~The final agenda will be compiled three (3) business days before the meeting.~~

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- e. ~~Any EIC Commissioner may bring up an item at any meeting under "New Business."~~
- f. D. At the start of ~~any~~ the meeting, agenda items can be called into question by any EIC member by making a motion to remove the item. ~~Votes on removal will be decided by a simple~~ If a majority of voting members ~~these~~ present ~~and voting~~ vote to remove the item it shall be removed from the agenda.
- Section 6 Any member of the EIC may request ~~A call for~~ an emergency meeting ~~of the EIC~~ to discuss an issue pertaining to the handling of elections within Pima County ~~can be requested by any Commissioner, through the Coordinator, by notifying staff of the request. who then obtains written or email support from~~ Staff shall notify each member of the EIC of the request and if four(4) ~~other voting~~ members support the request through written, email or other communication then the emergency meeting shall be scheduled at the earliest available time.
- Section 7 Abstentions are not allowed in EIC voting decisions. However, the Chair or a Commissioner may request that a private vote be conducted. Under this procedure, a vote must be scheduled in accordance with the Open Meeting Law (OML). Each Commissioner makes a special quasi-anonymous ballot to express a preference. The special ballot allows votes to be counted without identifying the voter. Then, once the votes have been tallied, the ballots may be recounted to record the vote of each Commissioner. The intent of this option is to a) make voting consistent with the OML by recording each Commissioner's vote, and b) to counteract the tendency to produce non-deliberative majority voice votes which encourage non-deliberative voting behavior in which voters can be unduly influenced by other voters.

ARTICLE X ETHICAL CONDUCT

- Section 1 At all times each EIC Commissioner shall conduct him ~~and~~ or herself in a respectful and collegial manner ~~when dealing with other members or the public.~~
- Section 2 When Operating Outside of Formal EIC Proceedings:
- ~~a. it is understood that Commissioners are likely to engage in political activities outside of the formal EIC structure.~~
- b. Whenever ~~members~~ Commissioners speak publicly and they choose to mention their EIC membership they must state for the record that ~~he or she is not~~ they are speaking ~~for themselves and not on behalf of~~ the EIC.
- c. ~~Members~~ Commissioners have the right to publicly discuss EIC business that is a matter of public record.

ARTICLE XI LIMITATION of POWERS

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~~Section 1~~ Neither the EIC nor any ~~member~~ **Commissioner** may incur governmental expenses without the prior authorization of the governing body affected, nor may they obligate Pima County in any form.

ARTICLE XII
PARLIAMENTARY AUTHORITY

~~Section 1~~ The parliamentary guidelines of the Pima County Election Integrity Commission shall be in accordance with Robert's Rules of Order, ~~eleventh edition~~ **as applicable**.

ARTICLE XIII
OPEN MEETING LAW TRAINING

Section 1 The EIC shall hold a training session on the Open Meeting Law for all members once a year.

Section 2 If any member(s) miss the scheduled training session, for whatever reason, a training session shall be conducted for that (those) person(s) as soon as possible.

ARTICLE XIV
AMENDMENTS and REVIEW

Section 1 These bylaws may be amended at any regular meeting of the EIC by a two-thirds (2/3) vote of ~~two-thirds of eligible voters~~ **those present and voting**, provided that notice of the change has been given to ~~members~~ **Commissioners** at least one (1) week prior to the meeting at which ~~the~~ **the** voting takes place.

Section 2 These bylaws shall be reviewed **at least** every five (5) years by the EIC.

Ratified by the Pima County Election Integrity Commission on this _____ day of _____, 2015.

~~_____~~
~~10-21-11~~

~~Date~~

Chair, Election Integrity Commission

Counsel as to Form