



MEMORANDUM

Date: September 1, 2010

To: The Honorable Barbara LaWall
Pima County Attorney

From: C.H. Huckelberry
County Administrator 

Re: **Presence of a Deputy County Attorney during Key Election Procedures to Provide Advice to the Elections Director and Other Necessary County Officials**

You may be aware of the ongoing dispute regarding the selection of which races to count during a hand count audit procedure. I am enclosing an email I received regarding this subject as well as Elections Director Brad Nelson's August 30, 2010 memorandum.

Your attorneys, as has been recent practice, were not present to hear the context of the discussion and debate between the various party representatives regarding which races to be selected for the hand count audit. The issue needed to be translated by the Elections Director to the responding attorney, in this case, Karen Friar. There apparently will be additional discussion about whether proper procedure was followed, although I believe your office indicated the advice given and procedure followed were correct.

I anticipate this matter will be heard by the Election Integrity Commission at its September 17, 2010 meeting. I would appreciate both Mr. Daniel Jurkowitz and Ms. Karen Friar attending this meeting to provide input on this matter from their perspective.

I would also request that, for all future Pima County elections, a Deputy County Attorney be present at locations where key election activities are occurring so they may provide advice to Elections officials, including the Elections Director, with complete and direct knowledge of the facts, circumstances and arguments being made if conflicting opinions have been offered by other individuals or party representatives. As always, the advice they provide should be in private to their client. The client, based on their advice, will proceed accordingly.

I would appreciate your earliest consideration of this request.

CHH/mjk
Attachments

c: Amelia Cramer, Chief Deputy County Attorney
Christopher Straub, Chief Civil Deputy County Attorney
Brad Nelson, Elections Director
Dr. John Moffatt, Office of Strategic Technology Planning

Chuck Huckelberry

From: Chris Straub
Sent: Monday, August 30, 2010 4:20 PM
To: Chuck Huckelberry
Cc: Amelia Cramer; Regina Nassen; Daniel Jurkowitz; Karen Friar
Subject: ATTORNEY CLIENT PRIVILEGE RE: Hands count audit

Chuck: Regina and I spoke to both Karen and Dan regarding this matter and we stand by the advice that was given to Brad as it is consistent with the statute, the Secretary of State's Elections Procedures Manual [May 2010], and the specific training that was given by the Secretary of State to the election officials of all 15 Arizona counties. With respect to the later, both Karen and Dan attended this training. As you know, the County is required by A.R.S. § 16-452 to follow the Procedures Manual.

If you or the Board have concerns about the current hand count process, perhaps such concerns could be addressed as part of the County's legislative agenda for the upcoming legislative session. As always, this Office would be happy to assist County staff with the drafting of the appropriate legislative amendments.

Chris

From: Amelia Cramer
Sent: Monday, August 30, 2010 9:54 AM
To: 'Chuck Huckelberry'
Cc: Chris Straub; Regina L. Nassen
Subject: ATTORNEY CLIENT PRIVILEGE RE: Hands count audit aftermath

Yes, let's discuss.

I have another matter to talk with you about, too.

(In the meantime, I will ask Chris Straub to get to the bottom of whether Ms. Friar gave erroneous advice.)

From: Chuck Huckelberry [mailto:Chuck.Huckelberry@pima.gov]
Sent: Monday, August 30, 2010 9:51 AM
To: Amelia Cramer
Subject: Fwd: Hands count audit aftermath

This is why I want an attorney present in person. We can discuss.

Begin forwarded message:

From: "Brad Nelson" <Brad.Nelson@pima.gov>
Date: August 30, 2010 9:11:15 AM PDT
To: "Chuck Huckelberry" <Chuck.Huckelberry@pima.gov>
Cc: "John Moffatt" <John.Moffatt@pima.gov>
Subject: Hands count audit aftermath

Mr. Huckelberry - On the morning of the hand count audit, Dem Chair Jeff Rogers and the Rep Chair designee Benny White, met at Election Center on South Country Club to select the precincts and races to be subject to hand count audit. All went well with no discussion regarding the appropriateness of the procedure.

Upon our arrival at the location of the hand count audit (3434 E. 22nd Street) Mickey Duniho took exception to the races selected for he felt certain that we had not chosen the races correctly. A heated discussion then took place between Rogers, White and Duniho about the subject. I informed the three that I would contact a county attorney for direction.

Daniel Jurkowitz has been assigned as my lead attorney with Karen Friar as his backup. I was unable to connect with Jurkowitz but was able to contact Friar. From her home, Friar reviewed the law and procedures manual and advised me that we had performed the race selection correctly and to continue with the count as planned. Thereafter I informed Rogers, White and Duniho that based on advice from Friar we would continue as planned.

Rogers then informed me that he would ask that this matter (audit race selection) be brought up at the next EIC meeting.

The day after the hand count, Benny noted that although the hand count audit proved that the machines had counted accurately, we likely did not select the races appropriately.

Now that the dust has somewhat settled, I hope that all (including the County Attorney) can assist in defining the proper procedure for the coming general election.

I hope to answer any questions you may have about this matter during our meeting this coming Wednesday.

Brad R. Nelson, Director
Pima County Elections
520.351.6830

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(520) 351-6830 FAX (520) 351-6870

To: Chuck Huckelberry, County Administrator
From: Brad R. Nelson, Elections Director 
Date: August 30, 2010
Subject: Hand Count Audit of the August 24, 2010 Primary Election

It is my understanding that some additional information is needed regarding the hand count audit of the August 24, 2010 primary election.

Per statute, the county political party chairs (or their designees) met within 24 hours after the polls closed to begin the hand count process. The meeting was held on August 25 with Democratic Party Chair Jeff Rogers and Benny White representing the Republican Party. The meeting was about the scheduling of events for the actual audit that was to occur on August 28.

On the morning of August 28, Chair Rogers and Mr. White randomly selected nine precincts to be included in the hand count audit. Those precincts were: Precincts 293, 64, 370, 139, 272, 166, 121, 329, and 266.

Thereafter the contested races to be audited were randomly chosen by Rogers and White. Those races were: Governor – Republican Party, US Representative District 8 – Republican, State Senator District 30 – Republican, and Superintendent of Public Instruction – Democratic.

Prior to the auditors beginning the hand count audit of the selected races/precincts, a discussion among Chair Rogers, Mr. White and Mickey Duniho began concerning how the audit was to occur in the selected precincts where CD8 and LD30 (the randomly selected races) were not reflected on the ballot. Rogers and Duniho contended that an additional race should have been selected. Mr. White contended that so long as CD8 and LD30 were reflected in at least one of the nine selected precincts, no additional races were necessary.

The gentlemen asked me for my opinion on the matter. Given that they were requesting a legal opinion I informed the gentlemen that I would contact a County Attorney by phone to get the needed opinion. Deputy County Attorney Karen Friar opined that additional races were not required and to carry on as planned.

Had additional races been selected we likely would have selected a contested CD race, LD race, or statewide race via random selection to be audited in those precincts where CD8 or LD 30 were not reflected on the ballot.

During the hand count audit Chair Rogers mentioned to me that he would likely ask the Pima County Election Integrity Committee to take up this topic at the Committees next meeting. I too am very much in favor of soliciting the committees input and hope that the county attorney can contribute to our discussion as well.

Though the race selection may not have been broad enough to have four races audited in every precinct, I hasten to add that the hand count audit that was performed was 100% accurate.

Mr. Huckelberry, hopefully this memo has provided you with the info you need. Please contact me with any additional comments or questions. I am at your service.

Chuck Huckelberry

From: Benny White [bennywhite1@cox.net]
Sent: Monday, August 30, 2010 12:01 PM
To: F. Ann Rodriguez; Chris Roads; Brad Nelson
Cc: Chuck Huckelberry; John Moffatt; 'Pima County Republican Party'; 'Bob'; Roger Randolph
Subject: Voting Areas with Combined Precincts-Improper Ballot Distribution by Poll Workers

After the recently concluded Primary Election I had a chance to look at several irregularities that occurred during the election.

One issue was a problem with voting areas where more than one precinct was included in the voting area. In thirteen (13) voting areas, five of which were not combined, there were no votes recorded as being cast by one party or the other.

In eight of these voting areas, where there were two precincts combined, the poll workers decided to give all Republican voters the ballots from one precinct and all Democrat voters the ballots from the other precinct. As it turns out in this particular election, the votes for the candidates were apparently not affected and the voter histories will not be affected because the signature rosters were combined as well. The only place this shows up is when you do an analysis of the canvass and you see that there were no Republicans voting in a precinct or no Democrats voting in a precinct.

For example in VA 029, which was a combination of Precincts 029 and 266, all the Republicans voted Precinct 029 Republican ballots and all of the Democrats voted Precinct 266 ballots and the GEMS results reflect that. However, there were Republicans from Precinct 266 who voted at the polls and there were Democrats from Precinct 029 who voted at the polls. If someone does a comparison of the voter histories from the October 2010 precinct registers against the canvass election they will see that voters were credited with a voting history but there were no Polling votes recorded for their party of registration in that precinct.

As I say, I don't think this occurrence affected any of the results but this behavior by poll workers will have significant effect when we have elections where various jurisdictions, such as city, school district, etc. are combined in the same voting area. The votes in these races tend to be fairly limited in number and several voting areas doing this same thing could drastically affect the outcome of the election.

I received many complaints from city residents in the 2009 Consolidated November Election that they went to their polling places, attempted to vote a city election ballot, but were unable to do so because the poll workers refused to give them the correct ballot. Many voters aren't aware that there may be several types of ballots within one voting area and it is therefore incumbent that we do everything we can to instruct the poll workers, and possibly the voters, that there are various types of ballots available and that it is important to make sure the voter gets the correct ballot. The posting of sample ballots and the inclusion of color stripe reference in the precinct signature rosters does not seem to be adequately addressing this problem.

There were three voting areas on the Tohono Oodham reservation where no Republican ballots were cast at the polls. The numbers of Republicans in the reservation are very small and those who are not on the PEVL are smaller still. However, there were more than one hundred voters who were eligible to vote Republican ballots in the Primary and there was not a single Republican vote cast.

Here are the figures of voters by registration and not on the PEVL list in these three voting areas:

tblPIMAAII_Crosstab3

precinct	Total Of voter_id	DEM	IND	PND	REP
003	228	167	13	41	7
136	183	135	13	24	11
307	146	102	12	22	10

The voting areas which were combined and one party or the other (DEM or REP) voters did not cast any of their party ballots in one of the precincts involved:

007/378
018/290
029/266

032/033
059/060
088/363
128/304
183/198

Voting Areas 285 and 375 present yet another scenario. These voting areas did not include combined precincts but no one from one party or the other voted at the polls. Here is a breakdown by party of the voters who were eligible to vote at the polls, i.e., they were properly registered and did not request an Early Ballot.

tbIPIMAAII Crosstab3

precinct	Total Of voter_id	DEM	IND	PND	REP
285	9	2		3	4
375	13	4	3	6	

Here are the total numbers of voters with active registrations in those precincts:

tbIPIMAAII Crosstab3

precinct	Total Of voter_id	DEM	IND	LBT	PND	REP
285	20	4		1	3	12
375	16	5	3		7	1

Since the total voter registrations in these two voting areas is so low it is entirely possible that no one from one party or the other showed up at the polls on Election Day. There were votes on both DEM and REP ballots in Early Voting and there were a few REP ballots cast at the polls in 285 and a few DEM ballots cast at the polls in 375. This probably simply shows voter behavior rather than any action taken by the poll workers.

The reason for this posting is that we will have a consolidated election in November and this issue will be present in many precincts and voting areas. We need to do everything we can to make sure the voters get the correct ballots so that these elections can be conducted legally and fairly.

Benny White
Republican Representative, Election Integrity Commission