



MEMORANDUM

Date: September 17, 2008

To: Christopher Straub
Chief Civil Deputy County Attorney

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "C.H. Huckelberry", is written over the typed name of the County Administrator.

Re: **Request for a Written Legal Opinion Regarding Certain Election Issues Arising Out of the Hand Count Audit Requirements of Arizona Law**

The purpose of this memorandum is to request your written legal opinion regarding a number of issues that have either been raised or could be raised regarding conducting the hand count audit of contested races in the General Election of 2008. I would request your written legal opinion on the following issues:

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?
2. What are the proper number of precincts to be audited, and can the Board of Supervisors, by administrative directive and approved motion, require that twice the number of precincts allowed by state law be subject to hand count audit?
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 to appear for the hand count audit, can the hand count audit be conducted?
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?
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?

Christopher Straub

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I would appreciate your written legal opinion on these issues at your earliest convenience since the November General Election is just a few weeks away and these issues have caused some debate among the participants. It would be appropriate to have a written legal opinion regarding these matters so that the legal position of the County regarding hand count audits and related procedures is well known before the audit is conducted immediately after the November General Election.

CHH/jj

c: Martin Willett, Chief Deputy County Administrator
Brad Nelson, Elections Director
Dr. John Moffatt, Office of Strategic Technology Planning