



Improvements to Elections in Order of Priority

1. Get rid of the machines (All of them-BMDs, Tabulators, Electronic Pollbooks, etc).
2. Go to Precinct Level Voting. County-wide is not auditable.
3. Follow the law, not the SOS guidance when it is in clear contradiction to the stated law. Here are 2 examples:
 - a. Numbering of ballots. Sec. 52.062. NUMBERING OF BALLOTS. The ballots prepared by each authority responsible for having the official ballot prepared shall be numbered consecutively beginning with the number "1."
 - i. We do not want the randomized number on the ballots. This is a feature that makes auditing difficult, if not impossible.
 - ii. ES&S has a feature to use randomized or sequential. Let's go back to sequential OR can we add a 2nd number for auditing purposes?
 - iii. Numbering idea: Stamp number on the back near signature. Set ten on a table. The voter can select their ballot. They will know their number. (THEN run through the printer for the Ballot Style/Precinct and other top info to be printed.)
 - b. Partial Manual Count—TEC 127.201 “general custodian of election records shall conduct a manual count of ALL the races in at least one percent of the election precincts or in three precincts, whichever is greater, in which the electronic voting system was used.”
 - i. The law says ALL races in 3 precincts. Follow the law.
 - ii. The SOS has issued guidance that says that counties that are enrolled in the County-Wide Polling Place Program may conduct the partial manual count by precinct OR by polling place. This is contrary to the law.

- iii. A hybrid method (recounting some ballots by precinct and some by polling place) is illegal, AND there is no SOS advisory stating anything about a hybrid method. Collin County Elections conducted the Partial Manual Count of the 2020 Election in this hybrid method.
4. Any future renewal of the contract with ES&S should require:
 - a. The absence of the iDRAC8 component in the system.
 - b. Access to the Source Code
 - c. A provision that after the source code is reviewed by independent CISSP professionals if they have legitimate concerns, the contract can be nullified.
5. Bring in a CISSP certified professional to secure the Main Elections office building (The timing of this evaluation needs to be discussed between all parties.)
 - a. Ensure that the iDRAC8 component is removed from the Server.
 - b. Evaluate the security between Dominion on one side and the Dallas Morning News on the other side of the Election Office and recommend improvements to the security of the Elections Office
 - c. Check for any unsecure internet connections.
 - d. Provide a public report of the findings and measures that were taken based on their recommendations.
6. Get rid of Ballot Marking Device (BMD), and go to Hand-marked ballots.
 - a. Ballots should have embedded security so that counterfeit ballots can be detected.
 - b. Precinct level voting with enough ballots plus a little more of the correct ballot styles OR
 - c. Ballot-on-Demand
 - d. Here's an idea for Ballots: color-code for Federal, State and Local elections.

7. Register of Ballots Form- (standardized form from SOS). This form reconciles how many ballots are used by a polling place. Collin County only uses this form on Election Day. It needs to be filled out daily, including during Early Voting so that there is a chain of custody of the ballots.
8. Increase the Text Font on the bottom of the Ballot – so that voters can read their ballot, especially those who wear glasses or are visually impaired. Also, if we are allowed to hand-count, this step will help auditors to not strain when reading the ballots during auditing.
9. Allow voters to mark a hand-marked ballot at the Main Elections office instead of using a Ballot Marking Device (BMD).
10. County Judge and Commissioners advocate for transparency and accuracy in the voting roster. The number of voters, names and VUIDS should match from the Precinct to the County to the State. If they don't match, do not certify the election.
11. CVR available before canvassing and certifying election.
12. Allow citizens to take a picture of their ballot.
13. According to the SOS website, the duties of the Election Commission are to hire, fire and monitor the Election Administrator. The citizens want oversight of the office. It appears that the SOS has assigned this oversight duty to the Election Commission, even though it is not explicit in the law. We would like the Commission to schedule a quarterly meeting and allow the public to address concerns that they have about elections and Election Office operations.
14. Ballot Marking Device – wording on screen.
 - a. Currently says something like: “Thank you for voting.” At this point they have not voted.
 - b. Change wording to something like: “Read your ballot, make sure your selections are correct, then please deposit your ballot into the tabulator.”
15. Public Awareness campaign on Reading your Ballot after it is marked.
 - a. newspaper, TV ad, FB ads, website, etc.
 - b. Train judges/clerks/workers to notify voters to read their ballot before putting in the tabulator.

16. County notification to all voters informing them of upcoming elections and polling locations by email.
17. Place the Logic and Accuracy Test notification on the front page of the Elections webpage.

**CCDF-Collin County Improvements to Elections in Order of Priority
with Collin County Elections Department's Responses**

1. Get rid of the machines (All of them-BMDs, Tabulators, Electronic Pollbooks, etc).
2. Go to Precinct Level Voting. County-wide is not auditable.

In November 2020 Early Voting represented 93% of the total votes cast during that election. Currently, the only precinct voting option for Collin County would be to change Election Day voting, which was only 7% of the total ballots cast during the November 2020 Election. [Texas Election Code](#) (Sec. 85.003 and Sec. 85.066) requires Early Voting to be conducted in this countywide model. This recommendation would require a legislative change to Early Voting to be a true by precinct vote for both Early Voting and Election Day. It should be noted that countywide vote centers (which were established in Texas in 2006) reduced voter confusion by eliminating voters incorrectly casting their ballots at the wrong polling location (precinct), thus having their provisional ballot rejected. The vote center model allows any voter to cast their ballot anywhere in the County, just like during Early Voting.

Second, we believe that our current system is auditable using the countywide vote center model. Countywide voting can be audited by looking at in-person rosters and ballots cast at each location. This data can be sorted further at each location by precinct, which disproves this theory.

3. Follow the law, not the SOS guidance when it is in clear contradiction to the stated law. Here are 2 examples:
 - a. Numbering of ballots. Sec. 52.062. NUMBERING OF BALLOTS. The ballots prepared by each authority responsible for having the official ballot prepared shall be numbered consecutively beginning with the number "1."
 - i. We do not want the randomized number on the ballots. This is a feature that makes auditing difficult, if not impossible.
 - ii. ES&S has a feature to use randomized or sequential. Let's go back to sequential OR can we add a 2nd number for auditing purposes?
 - iii. Numbering idea: Stamp number on the back near signature. Set ten on a table. The voter can select their ballot. They will know their number. (THEN run through the printer for the Ballot Style/Precinct and other top info to be printed.)

We believe that the section of Texas Election Code referenced above pertains to pre-printed ballots. The pre-printed mail ballots that go out to voters from Collin County are sequentially numbered beginning with "1", as outlined in [Sec. 52.062 of the Texas Election Code](#). The blank ballot stock that is used for our ballot marking devices are not pre-printed ballots, and serial numbers are assigned randomly with an alpha numeric code. This procedure is defined [Texas SOS Election Advisory No. 2019-23](#), and confirmed by [AG Opinion KP-0422. Sec. 122.001 \(c\) of the Texas Election Code](#) "The secretary of state may prescribe additional standards for voting systems consistent with this title. The standards may apply to particular kinds of voting systems, to particular elements comprising a voting system, including operation procedures, or to voting systems generally." We believe that our current method of generating ballot numbers is more secure and auditable than the recommended method.

- b. Partial Manual Count—TEC 127.201 “general custodian of election records shall conduct a manual count of ALL the races in at least one percent of the election precincts or in three precincts, whichever is greater, in which the electronic voting system was used.”
 - i. The law says ALL races in 3 precincts. Follow the law.
 - ii. The SOS has issued guidance that says that counties that are enrolled in the County-Wide Polling Place Program may conduct the partial manual count by precinct OR by polling place. This is contrary to the law.
 - iii. A hybrid method (recounting some ballots by precinct and some by polling place) is illegal, AND there is no SOS advisory stating anything about a hybrid method. Collin County Elections conducted the Partial Manual Count of the 2020 Election in this hybrid method.

We believe that the method that we follow for conducting the partial manual recount is not contrary to Texas Election Code. [Election Advisory 2018-30](#) states: “For those counties that are participating in the Countywide Polling Place program, they have the option of completing the partial manual count in the traditional way by counting applicable ballots for a specific precinct or they may opt to conduct the partial manual count by polling place.” We believe that we are in compliance of the Texas Election Code, as we are following the guidelines outlined in the above Election Advisory.

4. Any future renewal of the contract with ES&S should require:
 - a. The absence of the iDRAC8 component in the system.

As stated in previous communications with members of this group, the iDRAC8 component was never connected to any part of the tabulation system or server. This tool was used briefly in 2019 during the data conversion of the ballot on demand/ballot by mail system, which printed mail ballots during the November 2019 Constitutional Amendment Election. This tool has not been used since 2019, and there is no objection from removing the tool from future renewal contracts with ES&S.

- b. Access to the Source Code

Collin County does not have access to the source code for our tabulation system. The Texas Secretary of State has possession of the source code for all voting systems used in across the State.

- c. A provision that after the source code is reviewed by independent CISSP professionals if they have legitimate concerns, the contract can be nullified.

5. Bring in a CISSP certified professional to secure the Main Elections office building (The timing of this evaluation needs to be discussed between all parties.)
 - a. Ensure that the iDRAC8 component is removed from the Server.
 - b. Evaluate the security between Dominion on one side and the Dallas Morning News on the other side of the Election Office and recommend improvements to the security of the Elections Office
 - c. Check for any unsecure internet connections.
 - d. Provide a public report of the findings and measures that were taken based on their recommendations.
6. Get rid of Ballot Marking Device (BMD), and go to Hand-marked ballots.
 - a. Ballots should have embedded security so that counterfeit ballots can be detected.
 - b. Precinct level voting with enough ballots plus a little more of the correct ballot styles OR
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7. Register of Ballots Form- (standardized form from SOS). This form reconciles how many ballots are used by a polling place. Collin County only uses this form on Election Day. It needs to be filled out daily, including during Early Voting so that there is a chain of custody of the ballots.

This statement is incorrect, because Collin County uses ballot accountability forms during both Early Voting and Election Day.

8. Increase the Text Font on the bottom of the Ballot – so that voters can read their ballot, especially those who wear glasses or are visually impaired. Also, if we are allowed to hand-count, this step will help auditors to not strain when reading the ballots during auditing.
Text size is determined by the number of contests/issues and responses on the ballot for that given election. We will review the font size on the ballot card on an election by election basis to ensure that we are using the maximum allowable font size for that election.
9. Allow voters to mark a hand-marked ballot at the Main Elections office instead of using a Ballot Marking Device (BMD).
This recommendation is not allowable by Texas Election Code. Texas Election Code does not permit two methods of voting in a polling location during a voting period. [Sec. 123.005 \(b\) of Texas Election Code](#) addresses this scenario specifically.
10. County Judge and Commissioners advocate for transparency and accuracy in the voting roster. The number of voters, names and VUIDS should match from the Precinct to the County to the State. If they don't match, do not certify the election.
Voter rosters at the County level will sometimes differ from the rosters at the State level due to records being updated locally. We have seen this occur when a voter begins an election on a mail ballot roster, and then changes their mind mid-election, and votes in-person. Data communicated up to the SOS is one way, and once a voter is flagged as a BBM voter, there is no path for recourse at the State level. It has been noted on the SOS webpage that hosts these rosters at the State level that "All information displayed is provided by county election officials. The Office of the Secretary of State does not alter or modify the data provided in any way. For questions related to this information, please contact the appropriate county election official." It should be noted that [Texas Election Code Sec. 127.131](#) requires the presiding judge of the central counting station to reconcile ballots cast to voter rosters. A county commissioners' court does not have authority to refuse to canvass election results.
11. CVR available before canvassing and certifying election.
[Sec. 1.012 \(f\) of the Texas Election Code, which was recently amended by House Bill 5180](#), states "Beginning on the first day after the date the final canvass of an election is completed, the general custodian of election records shall make available for public inspection election records that are: (1) images of voted ballots, if a county maintains images of voted ballots; or (2) cast vote records." We will comply with the requirements of the above mentioned Texas Election Code.
12. Allow citizens to take a picture of their ballot.
[Sec. 61.014 of the Texas Election Code](#) prohibits the use of a recording device within 100 feet of a polling location.
13. According to the SOS website, the duties of the Election Commission are to hire, fire and monitor the Election Administrator. The citizens want oversight of the office. It appears that the SOS has assigned this oversight duty to the Election Commission, even though it is not explicit in the law. We would like the Commission to schedule a quarterly meeting and allow the public to address concerns that they have about elections and Election Office operations.
Texas Election Code limits the duties of the Election Commission in each county to hiring, firing, or taking disciplinary actions relating to the position of elections administrator. Attorney General Opinion LO-88-62 concludes this by stating "the legislature did not intend the Elections Commission to be involved in the day-to-day performance of the administrator's job."

14. Ballot Marking Device – wording on screen.

- a. Currently says something like: “Thank you for voting.” At this point they have not voted.
- b. Change wording to something like: “Read your ballot, make sure your selections are correct, then please deposit your ballot into the tabulator.”

This recommendation seems like a reasonable ask. The Elections Department will explore the possibility of making these changes.

15. Public Awareness campaign on Reading your Ballot after it is marked.

- a. newspaper, TV ad, FB ads, website, etc.
- b. Train judges/clerks/workers to notify voters to read their ballot before putting in the tabulator.

Notices are posted in the polling place, and election workers are trained to notify voters to read the ballot before depositing into the tabulator. The Elections Department will add a reminder to “read your ballot after it is marked” on the Elections website.

16. County notification to all voters informing them of upcoming elections and polling locations by email.

Voter registration files do not contain email addresses.

17. Place the Logic and Accuracy Test notification on the front page of the Elections webpage.

This recommendation seems like a reasonable ask. The Elections Department will explore the possibility of posting a quick link to all notices on the first page of the Elections website. The Notice of Public Test is currently posted in the notices section of the webpage, which is the appropriate spot for the notice.

#2

Sec. 85.003. VOTERS SERVED BY MAIN POLLING PLACE. Any person entitled to vote an early voting ballot by personal appearance may do so at the main early voting polling place.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.
Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.09; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991.

Sec. 85.066. VOTERS SERVED BY BRANCH POLLING PLACE. (a) Except as provided by Subsection (b), any voter who is entitled to vote an early voting ballot by personal appearance may do so at any branch polling place in the territory served by the early voting clerk.

(b) For a countywide election in a county with a population of more than 2.5 million and a primary election in a county with a population of more than 1 million in which temporary branch polling places are established under Section [85.062](#)(d)(1), the commissioners court may limit voting at a temporary branch polling place to the voters of particular state representative districts. To the extent practicable, the state representative districts shall be grouped so that the temporary branch polling places in each group serve substantially equal numbers of voters. A maximum of four groups of state representative districts may be established under this subsection.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.
Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 1.15; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991.

#3a

Sec. 52.062. NUMBERING OF BALLOTS. The ballots prepared by each authority responsible for having the official ballot prepared shall be numbered consecutively beginning with the number "1."

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Effective September 1, 2023, our lobby walk-in hours will be 9 a.m. – 4 p.m. (Central), Monday- Friday.



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Note - Navigational menus along with other non-content related elements have been removed for your convenience. Thank you for visiting us online.

Election Advisory No. 2019-23

To: All Election Officials

From: Keith Ingram, Director of Elections

A handwritten signature in blue ink, appearing to read "Keith Ingram".

Date: October 23, 2019

RE: Electronic Voting System Procedures Advisory

The purpose of this advisory is to provide an explanation of various voting systems provisions in the Texas Election Code and Texas Administrative Code and to prescribe additional procedures for voting systems in accordance with Section 122.001(c) of the Texas Election Code. Each section is outlined below, and followed by the glossary of terms for voting systems.

All references are to the Texas Election Code unless otherwise stated.

[Section 1 – Acquiring a Voting System](#)

[Section 2 – Adopting a Voting System](#)

[Section 3 – Acceptance Testing](#)

[Section 4 – Election Set-up and Definition](#)

[Section 5 – Voting System Testing](#)

[Section 6 – Polling Place Preparation and Procedures](#)

[Section 7 – Central Accumulation Procedures](#)

[Section 8 – Post Election Audits](#)

[Section 9 – Voting System Security](#)

[Section 10 – Automatic Recount, if applicable](#)

[Section 11 – Requested Recount, if applicable](#)

[Section 12 – Retention of Election Material](#)

[Section 13 – Ballot Numbering and Ballot Signature/Initial Requirements](#)



Section 1 – Acquiring a Voting System (Ch. 123, Subchapter B)

A contract for the acquisition of a voting system must be (1) in writing, and (2) approved by the Secretary of State. This approval is required to ensure that the voting system being acquired complies with applicable state requirements. The authority acquiring the equipment is required to submit to the Secretary of State a letter requesting approval of the acquisition of the voting system along with a copy of the relevant portions of the acquisition contract. The Secretary of State only needs the relevant portion of the contract that contains the information identifying the versions of the voting system and voting system equipment.

If a contract is approved, the Secretary of State will provide to the parties of the contract:

1. A letter stating that the voting system and voting system equipment being acquired satisfy the applicable approval requirements, and
2. A certified copy of the written order issued by the Secretary of State approving the voting system and voting system equipment

Any contract not approved by the Secretary of State is **void**. If a contract is not approved, the Secretary of State shall provide notice to the parties of the contract of the reasons that the contract was not approved. Executing a voting system equipment contract without the approval of the Secretary of State constitutes a **Class B Misdemeanor**.

The letter and relevant portion of the contract may be sent via mail to the Secretary of State's Office mailing address or [via email](#).

Section 2 – Adopting a Voting System (Ch. 123, Subchapter A)

A voting system must be adopted for use in any one or more elections by resolution, order or other official action. The adoption of a voting system may be modified or rescinded at any time. Additionally, the authority adopting the system should indicate in their official adoption action whether they are adopting the system for use in early voting only, regular voting on election day or both. The general custodian of election records is required to make any user or operator manuals or instructions relating to the system available for public inspection.

An adoption action should include the following information:

1. Name of Vendor
2. Name of Voting System (including the version number)
3. Type of Equipment
4. What part of the election process the equipment will be used for (early voting in person/by mail, election day, provisional ballots),
5. What elections it will be used for (all elections or just certain elections)

Adoption of a Voting System occurs by the following authorities:

1. General Election for State and County Officers: Commissioners Court
2. Primary Elections: County Executive Committee of Party holding the primary
3. All Other Elections
 - a. The Commissioners Court, if ordered by the governor or a county authority,
 - b. The Governing Body of the Political Subdivision served by the authority ordering the election.

Section 3 – Acceptance Testing (Sec. 129.021)

If your entity has purchased or leased new voting system equipment from a vendor, the entity is required to perform Acceptance Testing under Sec. 129.021 immediately upon taking delivery from a vendor of a new system or new equipment components.

As part of the **Acceptance Testing**, the entity is required to do the following:

1. Verify that the system delivered is certified by the Texas Secretary of State.
 - a. To verify the system, the entity must compare the following to the certification order:
 - i. Model number and/or name of system.
 - ii. Software and/or firmware version.
2. Perform the following tests:
 - a. Hardware Diagnostic Test provided by Sec. 129.022(b);
 - b. Logic and Accuracy (L&A) Test as provided by Sec. 129.023; and
 - c. Any additional test prescribed by SOS.
3. The entity **MUST** complete a system validation. Your vendor should provide you with specific instructions on how to validate that software that is being installed and used on your voting system is the same software that was certified by the EAC.

Section 4 – Election Set-up and Definition (Chs. 125 and 129)

Prior to each election, there are a number of things you must do to properly configure your election systems. This section provides guidance on the pre-election actions you must take to prepare for an election.

1. Setting up Equipment:

- a. In order to prepare for an election you will need to program and configure the following equipment that is used in your jurisdiction, if applicable:
 - i. Election management system software
 - ii. Electronic ballot marking devices
 - iii. Direct recording electronic (DRE) voting machines
 - iv. Precinct scanners
 - v. Central scanners
 - vi. Electronic pollbooks
- b. Establishing passwords and users – As part of the set-up you should also:
 - i. Set different passwords for each election on your election management system and on your voting system equipment, as applicable.
 - ii. Set up different authorized users for the software, as applicable.
 1. The number of users that have access to your election management system should be limited.
 2. The names and access levels **must** be documented, tracked and preserved for the duration of your entity's use of your electronic voting system.

2. Programming or Coding Your Voting System Ballot

- a. Ballot Programming may be completed in one of the following ways.
 - i. **Programming by Authority that Owns or Adopts a Voting System**
 1. Programming or coding should be conducted in a secured location. (Sec. 129.051).
 2. Programming or coding should be completed with two individuals present, if available. This is to ensure that there is a witness to all actions taken with respect to the ballot.
 3. Poll watchers are not permitted to be present for this process.
 4. After the programming or coding is completed, you must store the electronic media or voting system equipment in a secure location and/or in the presence of an election official.(Sec. 129.051(b) and (c))
 5. Chain of Custody must be verified at each step of the process.
 - ii. **Programming by Vendor**
 1. If programming or coding is completed by vendor, you **MUST** track chain of custody of the electronic media throughout the entire process.
 2. If media is transferred between the entity and vendor via courier or common or contract carrier, there **MUST** be a tracking mechanism in place for the transport process.
 3. Upon receipt of the coded media, the entity must verify chain of custody for the transport process, AND the entity must verify chain of custody with the vendor. To verify chain of

custody with vendor, you must have a document or tracking sheet signed by the last person to handle the media before it was deposited in the mail or handed to a courier.

4. Upon taking delivery of media and verifying chain of custody, the coded media must be stored in a secure location or in the presence of an election official. (Sec. 129.051(b) and (c)).

3. Proofing the Programming

- a. After programming, you will need to proof the programming of your election for accuracy, and proofing shall include, but not be limited to, the following:
 - i. Verifying races within each precinct;
 - ii. Verifying precincts included in each ballot style;
 - iii. Verifying candidates associated in each race;
 - iv. Verifying party affiliation with candidates, if applicable;
 - v. Checking for all contests on ballot and verify that candidate/proposition spelling is correct;
 - vi. Checking contest order;
 - vii. Verifying the correct number of votes allowed for each race;
 - viii. Verifying that write-in positions are correct, if applicable;
 - ix. If available, verifying the audio ballot; and
 - x. Verifying straight-party associations to appropriate candidates in applicable elections.
 - xi. (Electronic Pollbooks) Verifying that the election was set up correctly, and that voters are assigned to the correct precinct/ballot style.

4. Back-Up Programming:

- a. As part of your recovery plan, you will need to back-up your election programming at various stages of the election definition process.
 - i. At a minimum, as soon as you finish the programming of your election and it's been locked down, create a back-up copy for storage at a secure off-site location.
 - ii. If another entity does your programming, keep your own back-up copy at a secure off-site location that is in your control, not the programming entity's control.

5. Security and Record Retention:

- a. The election setup materials shall be secured by limiting access to the person or persons so authorized in writing by the county clerk and/or election official.
- b. Any audit logs and ballot definition files created shall be included with retention material for that election as outlined in Retention of Election Materials in Section 12.

Section 5 - Voting System Testing (Chs. 125, 127 and 129)

Three types of voting system testing shall be performed for **each election** within a jurisdiction. The three tests are:

1. Hardware Diagnostic Test,
2. Logic and Accuracy (L&A) Test/Testing of Tabulation Equipment, and
3. Post-Election Audit (Partial Manual Count).

1. Hardware Diagnostic Test (Sec. 129.022):

- a. The general custodian of election records shall commence the Hardware Diagnostic Test prior to the election and allow time for each electronic voting device to be deployed, tested, repaired and/or replaced, if necessary. Each device shall be tested to verify that mechanical components are working correctly. This test shall include, but not be limited to, the following:
 - i. All input and output devices;
 - ii. Communications ports;
 - iii. System printers;
 - iv. System screen displays;
 - v. Boot performance and initializations;
 - vi. Firmware and/or software loads;
 - vii. Confirmation that screen displays are functioning;
 - viii. Verify and adjust to correct date and time, if necessary;
 - ix. Verify and adjust calibration, if applicable;
 - x. Confirm that the unit is cleared of votes;
 - xi. Confirm that it is configured for the current election; and
 - xii. Confirm that physical security devices are in working order (locks, seals, etc.)

2. Logic and Accuracy (L&A) Test/Test of Tabulation Equipment (Sec. 129.023 and Subchapter D, Ch. 127):

- a. The designated general custodian of election records shall conduct both a Logic and Accuracy Test and a Test of the Tabulation Equipment.
- b. **Logic and Accuracy Test:** Prior to the commencement of voting and no later than 48 hours before voting begins on the equipment, the designated general custodian of election records shall conduct the public Logic and Accuracy Test. **NOTE:** The Secretary of State (SOS) recommends conducting testing prior to mailing out mail ballots to ensure there are no issues with how the ballot has been coded.
- c. **Testing Board:** The designated general custodian of election records shall create a Testing Board consisting of at least two persons. The general custodian of election records shall make every reasonable effort to ensure that the testing board consists of at least one person from each political party that holds a primary election. (Sec. 129.023(a))
- d. **Notice Requirement:** A public notice must be published at least 48 hours prior to the testing. This notice must be published in the same paper you publish your election notice. The public Logic and Accuracy Test shall be open to representatives of the press and the public. If the test is being conducted for a primary

election, the general custodian must notify the county chair at least 48 hours before the date of the test. (Sec. 129.023(b) and (b-1))

- e. **Internal L&A Test:** An internal L&A test should be done soon after the programming and proofing of your election is complete. This will provide you time to make corrections as necessary and be better prepared for the public L&A test.
- f. **Test Ballots** – In preparation for the Logic and Accuracy Test, the designated general custodian of election records shall design a method which directs the Testing Board to cast votes which will verify that each precinct, ballot style, and contest position on the ballot can be voted and is accurately counted.
 - i. This can be done by marking test ballots or providing the Testing Board with some other form identifying how each test vote shall be cast. **NOTE:** The SOS **strongly** recommends that you devise your own test ballots, rather than using the test deck provided by the vendor.
 - ii. The **test** ballots for ballots that are read by a scanner must be prepared on the same ballot stock as the **official** ballots.
- g. The General Custodian of Election Records shall develop written procedures for the testing. The testing shall include:
 - i. Overvotes and undervotes for each race
 - ii. Write-in votes, when applicable.
 - iii. Straight party votes and crossover votes, as applicable.
 - iv. Electronic processing of provisional votes, if applicable to the system being used. (Sec. 129.023(c))
- h. The testing shall be designed in a manner which provides a different number of vote totals for at least three candidates in races with more than two candidates, or each candidate in races with exactly two candidates.
 - i. The predetermined results must be pre-calculated from the test ballots to allow comparison after the votes are tallied. (Sec. 129.023(c)(10))
- i. An appropriate number of voting devices will be available and the Testing Board may witness the necessary programming and/or downloading of memory devices necessary to test the specific precincts.
- j. Prior to the start of testing, all devices used will have the public counter reset to zero and presented to the testing board for verification.
- k. **Conducting the Test:**
 - i. **Ballot Marking Devices and DREs:**
 1. Manual vote choices are made by entering the votes indicated on the Test Ballot or designed form as stated above. To help prevent human error, all entries are made by a team of two people. One person calls out the votes and one person enters. Both team members verify the votes on the summary screen before the ballot is cast or printed.
 2. To test the audio, at a minimum, one set of vote choices will be entered using the audio feature. Both team members listen to the summary prior to casting or printing the ballot.

- ii. **Ballot Marking Devices:** Verify that the printed ballot reflects the choices entered on the Ballot Marking Device. Also, if applicable, process the marked ballots with the scanning equipment (precinct ballot scanner or central scanner).
- iii. **Scanner Based Systems (Precinct or Central Scanners):** Scanning Equipment must be tested as prescribed in Chapter 127, Subchapters D and F. Pursuant to Section 127.094(e) the design of the test ballots must also include the design in subsection (f) above.
- iv. **Accessibility Testing:** For each feature of the system that allows disabled voters to cast a ballot, at least one vote must be cast and verified by a two-person testing board team using that feature; this includes, but is not limited to all audio functions, large font functionality, and sip-and-puff functionality. As a reminder, all components should be checked during the Hardware Diagnostic Test as well.

I. Other Testing Measures:

1. **Modeming From Regional Substations:** If you transmit results via modeming from regional central counting stations to the main central counting station, test the transmission of results by modem, if applicable.

m. Finalizing L&A Test:

- i. When all votes are cast, the designated general custodian of election records and Testing Board shall observe the tabulation of all test ballots and compare the results to the predetermined results.
- ii. A test is successful if the results report of the electronic voting system matches the predetermined results. The voting system should otherwise function properly during the counting of the test ballots.
- iii. If the initial test is unsuccessful, the general custodian of election records shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

n. Verification: The Testing Board and the general custodian of election records **shall**:

- i. Sign a written statement attesting to the qualification of each device that was successfully tested, any problems discovered, and the cause of any problem if it can be identified, and
- ii. Provide any other documentation as necessary to provide a full and accurate account of the condition of a given device. We recommend that the number/characters of the seal attached to the voting device at the end of the test should be included in the written statement.

1. The SOS has issued form [AW 6-2, Certification of First Test of Automated Tabulating Equipment \(PDF\)](#), for this purpose.

o. Record Retention:

- i. Upon completion of the testing, the Testing Board shall witness and document all steps taken to reset, seal, and secure any equipment or test materials, as appropriate; and the general custodian of election records shall preserve a copy of the programming data used during the testing at a

secure location that is outside the administrator's and programming entity's control for the duration of the preservation period related to that election day.

- ii. All test materials, when not in use, shall be kept in a container with a uniquely identified tamper-resistant or tamper-evident seal. The general custodian of election records and at least two members of the Testing Board shall sign the seal. (Sec. 129.024).
 1. The designated general custodian of election records shall be the custodian of the container.
 2. The container may not be unsealed unless the contents are necessary to conduct a test under Chapter 129, Subchapter B or a criminal investigation, election contest, or other official proceeding under the Election Code. If the container is unsealed, the general custodian of election records shall reseal the contents when not in use. (Sec. 129.024(c)).
 3. The test materials shall remain sealed for the period for preserving the precinct election records. (Sec. 129.024(b)).

p. **Test of Tabulation Equipment:** The tabulation supervisor and counting station manager of the central counting station shall prepare and test the central accumulator system three times as required by Chapter 127, Subchapter D. The test shall be conducted as part of the Logic and Accuracy testing explained above.

i. **Design of Test:**

1. The test must be designed to determine whether the central accumulator system accurately tabulates results from the electronic files used to count ballots voted in the election. (Sec. 127.094(a))
2. The electronic files created from the Logic and Accuracy testing for the election must be used in the process of this test.

ii. **Conduct of Test One:**

1. The general custodian of election records shall publish notice of the date, hour, and place of the first test conducted under Section 127.093(b) in a newspaper, as provided by general law for official publications by political subdivisions, at least 48 hours before the date of the test. (This is the same notice as your public L&A test.) (Sec. 127.096(a))
2. **Internal Test: SOS Recommendation** - An internal Test of the Tabulation Equipment should be done soon after the programming and proofing of your election is complete. This will provide you time to make corrections as necessary and be better prepared for the public test.
3. The first test is open to the public. (Sec. 127.096(b))
4. Verify that your system has been reset to zero and print out a zero report prior to performing the test.
5. If the initial test is unsuccessful, the counting station manager shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

6. When a test is successful, the tabulation supervisor and counting station manager shall certify in writing that a test was successful and the date and hour the test was completed. The certification shall be retained with the test materials.
- iii. **Determining Success of Tabulation Test:** A test is successful if a perfect count of the electronic files, that contain the cast vote records (ballot images) and/or device results, is obtained and the central accumulator system otherwise functions properly during the counting of the test electronic files. (Sec. 127.095)
 - iv. **Security of Test Materials:** On completion of the test, the presiding judge, counting station manager, or tabulation supervisor shall place the test electronic files, or a copy of the test electronic files, and other test materials in a container provided for that purpose and seal the container so it cannot be opened without breaking the seal. The presiding judge, counting station manager, tabulation supervisor, and not more than two watchers, if one or more watchers are present, shall sign the seal or seal log, as applicable. The watchers must be of opposing interests, when possible. (Sec. 127.099)
 - v. **Custody of Test Materials:** The counting station manager is the custodian of the test materials until they are delivered to the general custodian of election records. (Sec. 127.100)
 - vi. **Requirements for Test Two of Tabulation Equipment:**
 1. The second test shall be conducted immediately before the counting of ballots or accumulation of vote totals begins on the equipment. (Sec. 127.093(c))
 2. The Central Counting Station (CCS) Manager and the Presiding Judge shall verify that the seal is intact on the secure container with the test materials.
 3. After verification, the CCS Manager and the Presiding Judge shall break the seal and remove test materials.
 4. The test materials used for Test One shall be reused for Test Two. If the results from Test Two match the results from Test One, it will be considered a successful test.
 5. If the test is successful, the Presiding Judge shall certify in writing that a test was successful and the date and hour the test was completed. This certification shall be retained with the test materials. (Sec. 127.097)
 6. The test materials shall be stored in a secure container until Test Three is performed.
 - vii. **Requirements for Test Three of Tabulation Equipment.**
 1. The Third Test shall be conducted after the counting of ballots or accumulation of vote totals has been completed.
 2. The Central Counting Station Manager and the Presiding Judge shall verify that the seal is intact on the secure container with the test materials.
 3. After verification, the CCS Manager and the Presiding Judge shall break the seal and remove test materials.
 4. The test materials used for Test One and Test Two shall be reused for Test Three. If the results from Test Two match the results from Test One, it will be considered a successful test.

5. If the test is successful, the Presiding Judge shall certify in writing that a test was successful and the date and hour the test was completed. This certification shall be retained with the test materials. (Sec. 127.097)
6. **Unsuccessful Test Three;**
 - a. If the test is unsuccessful, the ballot count is void, and the testing authority shall prepare a written record of what caused the discrepancy and shall repeat the test. If the test is successful, the testing authority must document what actions have been taken to achieve a successful test. The record shall be retained with the test materials.
 - b. If the testing authority is unable to achieve a successful test, the ballot count is void and the ballots must be counted manually, if applicable or with an alternative type of tabulating equipment

viii. **Precinct Ballot Counters and DREs:**

1. The Secretary of State has determined that it is not feasible to conduct the 2nd and 3rd test of the Tabulation Equipment on precinct ballot scanners and on DRE as described in Section 127.152(b). However you are still required to conduct to the test on any central accumulator used to accumulate your election media and/or generate election results.

Section 6 - Polling Place Preparation and Procedures

The following procedures should be taken at the polling place:

1. General Procedures

- a. Arrange the polling place to allow full view by presiding judge and election clerks of voting and voter activity to guard against unauthorized access while protecting voter privacy. (Sec. 125.004)
- b. Before opening the polling place for voting, the presiding judge must inspect the equipment to determine whether it is installed and functioning properly. If the equipment is not installed or functioning properly, then the presiding judge must take the appropriate corrective action. (Sec. 125.061)
- c. The voting equipment must be in sight of the presiding election judge and/or an election clerk at all times while the election is being conducted.
- d. The election official shall periodically check for evidence of tampering on voting equipment during the election. For example, make sure the uniquely identified tamper-resistant or tamper-evident seal is still intact. (Sec. 125.005)
- e. Restrict/monitor physical access to equipment when the presiding election judge and election clerks are not present.

f. A voting system technician may be present at the polling place for the purpose of repairing, assembling, maintaining, or operating voting system equipment. (Sec. 125.010)

g. Equipment Failure During Voting:

- i. Procedures and plans shall be written for handling election day equipment failure, including backup and contingency plans. (See Sec. 125.006 for further details).
- ii. If a DRE malfunctions during voting and there have been votes cast on that machine, extra precaution should be taken to protect the cast vote records (ballot images) and audit logs stored on that DRE. Secure the equipment and document the chain of custody when transporting the equipment to another location. (Sec. 125.006).

h. Fleeing Voter:

- i. When a voter begins the process of making ballot selections but leaves without casting a vote on a DRE, a polling place official must cancel the electronic ballot and document the cancellation.
- ii. When a voter leaves without fully depositing their paper ballot into the optical/digital scanner or ballot box, this ballot must be treated as a spoiled ballot, and the presiding election judge or an election clerk shall cancel the ballot and document the cancellation.

i. Provisional Voter:

- i. Provisional votes may be cast electronically on a direct recording electronic voting system only if the system segregates provisional votes from regularly-cast votes on the election day precinct returns. Verify that no conditions are listed on the Secretary of State certification document for your system that would restrict the use of electronic provisional voting. (Tex. Admin. Code § 81.176).

j. Curbside Voter:

- i. If the voter is physically unable to enter the polling place without assistance or likelihood of injury to the voter's health, then the voter may vote at the curbside. (Sec. 64.009)
- ii. A presiding election judge or election clerk shall deliver the voting device to the curbside voter.
- iii. Make sure to allow the curbside voter the same privacy as a voter in the polling place.

2. Opening the Polls

- a. The presiding election judge shall verify and document the unique identifier (e.g., serial number) of the equipment delivered to the polling site.
- b. Look for evidence of tampering and document the time this was done.
- c. Verify that the Public Count is "0" on each applicable device.
- d. Check the accuracy of the date and time on applicable equipment.
- e. Confirm that all units are open for voting, as applicable; and
- f. At a minimum, print one zero tape from each applicable device, as follows:
 - i. The presiding election judge, an election clerk, and not more than two watchers, if one or more watchers are present, shall sign the zero tape.

- ii. Maintain zero tapes in a secure location to be returned with election materials (i.e., Ballot Box #4 or other secure means designated by the general custodian of election records). **NOTE: Certain counties participating in the Countywide Polling Place Program that use the Hart eSlate have a modified procedure regarding the printing of zero tapes. Please contact the SOS for a copy of these procedures.**

3. Closing the Polls

- a. Verify and document the public count on applicable devices.
- b. Verify that the public count(s) match the number of voters that have signed the combination form or checked in for voting through an electronic pollbook. If there is a discrepancy, the presiding judge should attempt to determine the source of the discrepancy and document their investigation.
- c. After the polls have been closed on election day, the precinct election officials shall print out, at a minimum, three copies* of the results tape from each applicable device, and secure the voting device against further use. (WARNING: Do not print out the results tape during Early Voting; this includes the last day of Early Voting). **NOTE: Certain counties that participate in the Countywide Polling Place Program and use the Hart eSlate, have a modified procedure regarding the printing of results tape. Please contact the SOS for a copy of these procedures.**
 - i. The presiding election judge, an election clerk, and not more than two watchers, if one or more watchers are present, shall sign the results tape(s).
 - ii. The copies of the results tape(s) shall be distributed as follows:
 1. Envelope #1 that is delivered to the presiding judge of the canvassing authority;
 2. Envelope #2 that is addressed to the General Custodian; and
 3. Ballot Box #3 (or other secure means designated) that is delivered to the general custodian of election records, along with other election media and materials. ***NOTE:** Some entities may opt to only print two copies of the results tape as two of the three copies are being returned to general custodian.
 - iii. Lock and secure the voting equipment and other election material from any physical access to prepare for transport.
- d. **Central Counting Station:** For entities that have established a central counting station for the purpose of counting or accumulating voting system results -- the results tapes that are printed at the polling place are **NOT** considered the official precinct returns. The official returns will be prepared at the central counting/accumulation station and certified by the presiding judge of the central counting/accumulation station in accordance with Section 127.131 of the Texas Election Code.
- e. **Precinct Scanners:** For additional procedures specific to Precinct Ballot Counters, please see [Advisory 2017-17 – Updates to Voting System Procedures –Precinct Ballot Counters](#).

4. Early Voting Procedures.

- a. Opening the polls procedures above also apply to the 1st day of early voting.

- b. Opening the polls on the 2nd thru last day of early voting shall be handled as follows:
 - i. Look for evidence of tampering and document the time this was done;
 - ii. Verify and document that the numbers on the public counter match the number of voters documented on the early voting by personal appearance roster at the close of polls on the previous day; and confirm that all units are open for voting.
- c. Suspending and securing the Polls during Early Voting by personal appearance, except for the last day.
 - i. Verify and document that the numbers on the public counter match the number of voters documented on the early voting by personal appearance roster at the close of polls on the previous day;
 - ii. Lock and secure voting equipment, so no additional votes may be cast on the voting equipment; and
 - iii. Restrict physical access to voting equipment.
- d. **Early Voting:** Secure Early Voting location at the end of each day and store the equipment in a secure location to prevent theft or tampering after hours. If early voting clerk is unable to secure voting system equipment at early voting location, the equipment should be returned daily to the early voting clerk's office and redeployed on a daily basis.
- e. If the early voting device is being moved to another temporary location, the instructions listed in Section 9 of this document should be followed.

5. **Closing the Polls on the Last Day of Early Voting:** Verify and document that the numbers on the public counter match the number of voters documented on the early voting by personal appearance roster at the close of polls on the previous day and be sure to:
- a. Look for evidence of tampering and document the time this was done.
 - b. **DO NOT PRINT THE RESULTS TAPE** (tape will be printed later at the central counting station); and
 - c. Lock and secure the voting equipment and other election material from any physical access to prepare for transport.

Section 7 – Central Accumulation Procedures (Ch. 127)

1. Election Night Verification for Central Accumulation System:

- a. As the media is loaded into a central accumulator, the election official shall verify that the vote totals on the electronic media match the vote totals on the printed results tape, if applicable.
- b. After uploading all precinct results to the central accumulator system, the election official must verify and document that the central accumulator's total number of votes cast in an election matches the number of signatures on the combination form. If there is a discrepancy, the presiding judge of the counting station in conjunction with the central counting station manager shall determine if a further audit is necessary.

2. Transferring Results from Secure Computer/Server

- a. Any time data is transferred to another computer, the transfer may only occur with the following devices:
 - i. Single use DVD/CD,
 - ii. Single use, disposable, removable USB thumb drive, or
 - iii. Re-formatted, multi-use removable USB thumb drive.
- b. In order to maintain the secure nature of the central accumulator, approved users should only use clean, removable media devices. These device should not have been previously used on any other computers or hardware. If they have been previously used, they must be properly reformatted each and every time they are inserted into the secure, central accumulator.

3. Audit Logs from Central Accumulators:

- a. All central accumulators certified for use in Texas elections maintain an internal audit log. Some of the legacy systems still maintain a continuous feed audit log printer. These audit logs (both internal and produced by continuous feed printers) are considered election records. They must be maintained with the election records for the proper preservation period.
- b. A full copy of the central accumulator's audit log must be printed after the tabulation of election results on election night. If an entity is using a continuous feed audit log printer, the attached log will serve as this required printed copy.
- c. The printed copy of the log must be retained with the election records for the preservation period.
- d. **Poll Watcher Access to Audit Logs (Tex. Admin. Code 81.62(g))**
 - i. A poll watcher may request a printed copy of an audit log produced by a central accumulator:
 1. Before any votes are tabulated,
 2. After early voting results are tabulated, and
 3. Immediately following the completion of the vote tabulation
 - ii. Once a request for a report has been made, the central counting station manager or tabulation supervisor is required to print a copy of the audit log at the required time, and make a copy of it available to any and all poll watchers that have requested a copy of the audit log. The CCS manager should NOT remove or tear off the audit log maintained by any continuous feed audit log printer, if one is being used with voting system in use.
 - iii. Poll watchers do not get to specify the format of the audit log produced. The central counting station manager has discretion as to whether to provide a copy of the audit log printed from the internal logs or provide a copy of the audit log produced from the continuous feed audit log printer, if one is being used.
 1. If the central counting station manager opts to use the audit log from a continuous feed audit log printer, then the poll watchers will only receive their copy of the log at the completion of the vote tabulation, as it is not feasible to provide a copy of the log at the intervals stated

above. Tearing the printed audit log to provide a copy to poll watchers would compromise the integrity of the audit log.

4. **Central Counting Station Plan (Sec. 127.007):** The manager of the central counting station is required to establish and implement a written plan for the orderly operation of the central counting station. That plan must be made available to on request not later than 5 p.m. on the fifth day before the date of the election. For details on what should be included in the central counting station plan, please see [Advisory 2017-16](#).
5. **Transmitting Unofficial Results for ENR Purposes:** Pursuant to Section 127.1231(b), the Secretary of State's Office may prescribe procedures for the use of a system to transmit results to the central counting station on election day. That system must provide for a secure transmission of data.
 - a. This type of system may be only used to transmit unofficial results to the central counting station for ENR purposes on election night.
 - b. A secondary copy of the results generated by each device may be placed on a duplicate media and connected to a transmission device that is not directly connected to the voting system. That transmission device can then transmit those unofficial results via a secure connection to another device set up for receiving those transmissions. Those unofficial results can be taken from the receiving device to be aggregated on a system that is not connected to the system that performs the official tabulation, and those unofficial results can be used for purposes of ENR.
 - i. Unofficial early voting results will be transferred via external media from the official tabulation system to the system generating the unofficial results on election night.
 - c. The official tabulation will be generated at the central counting station using the standard procedures without the use of any external networking system. These procedures do not modify the process for collecting, delivering, or tabulating the official results of the election.
 - d. After the unofficial results and the official tabulation have both been completed, the entity must perform an audit to verify that the unofficial results used for ENR and the official tabulation are identical.

Section 8 - Post-Election Audit (Partial Manual Count) (Sec. 127.201)

To ensure the accuracy of the tabulation of electronic voting system results, the general custodian of election records shall conduct a manual count of all the races in at least one percent of the election precincts or in three precincts, whichever is greater, in which the electronic voting system was used.

1. In a general election for state and county officers, primary election, or election on a proposed amendment to the state constitution or other statewide measure submitted by the legislature, the Secretary of State shall notify the election official, on the day after the election, of the selected precincts that must be manually counted. The election official shall begin the manual count within seventy-two (72) hours after the polls close and the count must be completed no later than the 21st day after Election Day. (Sec. 127.201(b))

2. All Other Elections: The custodian shall select the precincts at random and shall begin the count not later than 72 hours after the polls close. The count shall be completed no later than the 21st day after Election Day. (Sec. 127.201(a)). Section 127.201(b) supersedes this section to the extent of a conflict.
3. The SOS will send out detailed instructions regarding the partial manual count prior to the election it applies to.
4. See [Advisory 2018-30](#) for additional details on the partial manual count.
5. **Post-Election Verification for Central Accumulation System:**
 - a. To ensure the accuracy of any central accumulation software used to accumulate vote totals from electronic voting systems, the general custodian of election records shall conduct a post-election verification of the same precincts and races selected for the partial manual count either by the general custodian of election records or the Secretary of State, whichever is applicable.
 - b. The general custodian of election records shall verify that the vote total(s) printed on the results tape from the voting system equipment used at a given precinct or polling place matches the reports generated by the central accumulation software.
 - c. The general custodian of election records has the discretion to verify a greater number of precincts than specified above.
 - d. The reconciliation shall consist of a race-by-race comparison of the number of votes reported on the precinct results tape to the central accumulator's unofficial election results report that was generated on election night.
 - e. If there is any discrepancy in the comparison, the results tape from the precinct level shall constitute the official results.
 - f. Any political subdivision that utilizes a modem transfer or secured electronic transmission of election results from sub-stations to the central counting station for the purpose of being combined with other such tabulations to produce complete returns shall establish procedures to reconcile received tabulations to transmitted tabulations in order to determine if any discrepancies exist. Additionally, the procedures outlined in Section 7, number 5 of this outline must be completed. If any such discrepancies exist, the election results will be determined from any media that was read through the secured, official tabulation system that is not connected to the internet.

Section 9 - Voting System Security

1. **Personnel Security (Sec. 129.051(g)):** Employees authorized by the county clerk or election official to prepare or maintain the voting system or election setup materials shall be deputized by the county clerk or election official for this specific purpose and so sworn, with the following oath, prior to the first election of the calendar year in which they will be performing one or more of these activities:
 - a. "I swear (or affirm) that I will faithfully perform my duty as an officer of the election and guard the purity of the election." (Sec. 62.003)
2. **Criminal Background Checks Required (Sec. 129.051(g)):**
 - a. In accordance with Section 129.051(g) of the Texas Election Code, the General Custodian of election records shall conduct criminal background checks for all election officials, staff and temporary workers

who are engaged in pre-election programming, testing and preparing of the voting system equipment for Early Voting and Election Day. This does not include poll workers (election judges and clerks) assigned to work election voting centers or precincts, but does include temporary workers hired to test, store, or service voting equipment. Additionally, this includes all individuals that participate in both pre-election Logic and Accuracy Testing and pre-election testing of the tabulation equipment.

- b. A person having a criminal record is not automatically disqualified from working with electronic voting equipment. However, the hiring entity should consider the nature of the crime(s) in determining whether to hire or assign voting system duties to an individual with a criminal record. You may wish to consult with your Human Resources Department to develop a policy similar to your governing body's regular employment policy regarding persons with a criminal background.
- c. If you contract with your vendor to program, test, or perform maintenance on the voting equipment prior to an election, you may wish to require the vendor to certify that a criminal background check has been performed on the necessary employees. We recommend that part of your agreement or contract with the vendor include wording that they (the vendor) have performed that duty. Suggested language to include:
 - i. _____ Company certifies that a criminal background check on all employees, including temporary employees, that may program, test, perform maintenance, transport equipment, or perform technical support on the voting system equipment for **(name of entity)** has been performed. The Company has determined there are no findings that would prevent the employees from performing their assigned duties.
- d. Criminal background checks conducted through the Texas Department of Public Safety ("DPS") Crime Records Service will provide information on arrests, prosecutions and the disposition of the case for persons arrested for Class B misdemeanor or greater violation of Texas criminal statutes. This is part of the Conviction Database that is extracted from the DPS Computerized Criminal History System ("CCH"). Election custodians will be required to create a secure online account via the [DPS website](#) to conduct criminal history checks via CCHS. DPS has requested that each county elections custodian register the county with the user name that fits this formula: "**Name of Your County/Elections**" (e.g. Upshur County/Elections).
- e. Elections custodians will be required to sign a User Entity Agreement and a User Acknowledgement Agreement and fax completed documents to DPS. These documents will be presented to you online when you register for an account. Print each document and follow the instructions provided online, but fax the documents instead of mailing them as indicated on the website. When forwarding these documents, include a letter on your county letterhead requesting access to the secured CCHS and stating that the secured system search will be used in accordance with Texas Election Code § 129.051(g).
- f. It can take up to four (4) weeks to establish an account, but once activated, authorized county personnel will be able to conduct background checks as required by Texas Election Code § 129.051(g). If you need assistance accessing the DPS website, please contact the DPS representatives at 512-424-2474.

3. Pre-Election Security Procedures:

- a. **Unique Identifier:** All electronic media (e.g., USB drives, memory cards, compact flash card, PCMCIA card, PEBs, voter card encoders, supervisor cards, and key cards) shall have an external permanent

unique identifier (e.g., numbers, letters, or combination of numbers and letters). The identifier can be either etched or printed on a tamper resistant label. (**Recommendation:** include a barcode on the label, which will make it more efficient to inventory). (Sec. 129.051)

- b. **Inventory:** The general custodian of election records shall create and maintain an inventory of all electronic information storage media.
- c. **Chain of Custody of Electronic Media:** The general custodian of election records shall create a process and maintain a procedure for tracking the custody of electronic information storage media from their storage location, through election coding, through the election process, to their final post-election disposition and return to storage.
 - i. The chain of custody must utilize two or more individuals to perform a check and verification check whenever a transfer of custody takes place.
- d. **Secure Storage of Election Media:** The general custodian of election records shall create and maintain a secured location for storing the electronic information storage media when not in use, for coding a medium for an election, for transferring and installing the medium into the voting system equipment, and for storing the voting system equipment once the election parameters are loaded.
 - i. An election information storage medium shall be kept in the presence of an election official or in a secured location once the medium has been coded for an election.
 - ii. For each election, the general custodian of election records or their assigned staff shall seal each election information storage medium in its relevant voting device or container utilizing one or more uniquely identified tamper-resistant or tamper-evident seals.
 - iii. A combined master identification of the voting device equipment, the election information storage medium, and the seal(s) must be created and maintained.
 - iv. For election information storage medium that are device independent (e.g., PEBs, voter card encoders), these devices should be stored in a secured, sealed container and must also be identified on a master log.
- e. **Chain of Custody of Voting System Equipment:** The general custodian of election records shall create a process and maintain a procedure for tracking the custody of the voting device equipment once the equipment is loaded with an election definition.
 - i. The chain of custody must utilize two or more individuals to perform a check and verification check whenever a transfer of custody takes place.
- f. **Recovery Plan:** The general custodian of election records shall have in place a recovery plan that is to be followed should there be an indication of a security breach in the accountability and chain of custody procedures. The plan **must** include notifying the Secretary of State's office immediately. Any indication of a security breach must be confirmed by more than one individual.
- g. **Training Plan:** The general custodian of election records shall have a training plan for relevant election officials and staff that addresses these security procedures and the relevant work instructions.

4. Storage and Transport of Voting System Equipment (Sec. 129.052):

- a. The general custodian of election records shall adopt procedures for securely storing and transporting voting system equipment. This shall include procedures that are to be used at locations outside the direct control of the general custodian of election records, such as overnight storage at a polling location.
- b. Secure storage must employ the use of uniquely identified tamper-resistant or tamper-evident seals and logs, or other security measures that will detect any unauthorized access.
- c. For each election, the general custodian of election records shall create and maintain an inventory of these items for each storage location.
- d. The chain of custody must utilize two or more individuals to perform a check and verification check whenever a transfer of custody takes place or where the voting devices have been left unattended for any length of time. Particular attention must be given to the integrity of the tamper-resistant or tamper-evident seals.
- e. The general custodian of election records shall have a method of recording the names of the individuals who transport the voting system equipment and materials from one site to another and the time they left the sending site; and
- f. A method of recording the time the equipment transporters arrived at the receiving site and the name of the individual(s) at the receiving site who accepted the election equipment and material.

5. Restrict Access to Voting Systems (Sec. 129.053)

- a. The general custodian of election records shall secure access control keys or passwords to voting system equipment. Use of access control keys or passwords must be witnessed by one or more individuals authorized to use that information. The use of an access control key or password must be documented and witnessed in a log dedicated for that purpose that is retained until the political subdivision disposes of the equipment.
- b. The general custodian of election records must maintain these access control keys/passwords in a secured and controlled environment.
- c. The general custodian must utilize a form, letter or a list to document and indicate the following:
 - i. List of individuals that are given an access control key or password (based on duties, positions),
 - ii. What privileges they are given,
 - iii. When and where these privileges can be used, and
 - iv. An indication that the granting of access came from the general custodian of election records.
- d. If an individual leaves, changes roles, or positions or no longer requires access, the documentation that granted access to the individual needs to be updated and amended to remove the person's eligibility. Any keys distributed should be collected and passwords should be changed as applicable.
- e. Changes to the encryption keys and passwords are at the discretion of the general custodian of election records, but it is advisable that this discretionary authority should not be delegated. However, the individual(s) that implement the change must have this "authorization to change" responsibility delineated within their position descriptions(s). (Note the distinction relative to describing who may authorize a change, who implements a change, and who has access but cannot change the passwords and encryption keys.)

- i. Where appropriate, the degree of access should be defined within each relevant position description and maintained at that level within the election management system and/or equipment. This applies where a voting system can limit an individual's access to certain menus, software modules, etc.
- f. An access log should be developed and utilized to document access to any device, election media, or election management system that requires the use of a password and/or encryption tool. If possible, access should be witnessed by one or more individuals authorized to use such information.
 - i. The log should be retained throughout the life of the device or election management system.
 - ii. The general custodian of election records shall ensure the protection of the election tabulation process by securing the premises where the vote tabulation is being conducted and not allowing unauthorized and unescorted personnel to be in contact with tabulation equipment.
 - iii. The general custodian of election records shall have a training plan for relevant election officials, and staff that address these security procedures and the relevant work instructions.

6. Prohibit the Use of Network Connections and Restrictions on Wireless Technology (Sec. 129.054):

- a. No voting system shall be connected to any exterior communications network, including a connection to the Internet.
- b. A voting system may not have the capability of permitting wireless communication unless the system uses line-of-sight infrared technology that shields the transmitter and receiver from external infrared transmissions and the system can only accept transmissions generated by the system.

7. Restrict Usage of Voting System Computers (Sec. 129.055):

- a. All voting system computer(s)/server(s) shall be restricted to the sole purpose of election administration, and not used for other purposes.
- b. Only the applicable operating system, commercial off-the-shelf software (COTS) needed for the election process, and the certified voting software shall be loaded on a voting system computer/server.
- c. Remote Access to a voting system computer/server is not allowed.

8. Plan for Machine Failure (Sec. 129.056):

- a. The general custodian of election records shall create a contingency plan for addressing direct recording electronic voting machine failure. This plan must include timely notification to the Secretary of State's office.
- b. The plan should address the creation of emergency ballots, ballot boxes, transportation of voted ballots to the custodian of election records, and securing of DREs.

Section 10 – Automatic Recounts (if necessary) (Ch. 216)

1. An automatic recount must be conducted in an election requiring a plurality vote when two or more candidates for the same office tie for the number of votes required to be elected, unless the tying candidates cast lots to resolve

- the tie or one of them decides to withdraw.
2. An automatic recount must also be conducted in an election requiring a majority vote if more than two candidates tie for the highest number of votes or if two or more candidates tie for the second highest number of votes to determine who will be the runoff candidates before resorting to casting lots in order to resolve the tie.
 3. An automatic recount must be held if the candidates in a runoff election tie before the tying candidates can cast lots to determine the winner.
 4. The method of counting votes in an automatic recount is the **same method of counting** used in the election that resulted in the tie vote.
 5. In order to initiate an automatic recount, the presiding officer of the canvassing authority shall request the recount in writing in the same manner as a recount petitioner, except that no deposit is filed with the request, and the cost of the recount is covered by the political subdivision.

Section 11 – Requested Recounts (if necessary)

1. Requested Recount on DRE Voting Systems (Sec. 214.071):

- a. The candidate requesting a recount may request that the recount be done electronically or manually.
- b. For an electronic recount, the persons specifically permitted by law to be present at the recount are also authorized to be present as the election media are reloaded into the central accumulator system.
- c. For a manual recount of a DRE election, the Recount Coordinator shall organize the printing of cast vote records (ballot images) for the affected race or issue.
 - i. The Recount Coordinator shall notify the parties in the recount of the date, place, and time the printing of cast vote records (ballot images) will take place.
 - ii. The full recount committee is not required to be present at the printing of cast vote records (ballot images) and the Recount Chair shall determine how many members should be present. The persons specifically permitted by law to be present at the recount are entitled to be present as the cast vote records (ballot images) are printed and to have the same number of representatives as allowed for the recount.
 - iii. If the manual recount does not take place immediately after the printing of the cast vote records (ballot images), the printed cast vote records (ballot images) shall be locked and secured until the recount takes place.
 - iv. A manual count of the printed cast vote records (ballot images) shall be conducted in the same manner as a recount of hand-counted paper ballots.
 - v. After the recount is complete, the printed cast vote records (ballot images) shall be secured and preserved for the appropriate preservation period for maintaining election records.

2. Requested Recount on Optical Scan Voting Systems (See Ch. 214, Subchapter C)

- a. The procedures for a requested recount using automatic tabulating equipment are outlined at length in Chapter 214, Subchapter C, of the Texas Election Code.

Section 12 – Retention of Election Materials

1. Records created as part of an election must be retained for twenty-two months. In addition to the instructions provided in Section 66.058, electronic records shall be secured in a locked container sealed with one or more uniquely identified tamper-resistant or tamper-evident seals that is logged. This includes, but is not limited to the following:
 - a. Logic and Accuracy Test and results;
 - b. Printed audits (Real-time audit log);
 - c. Forms;
 - d. Zero tapes;
 - e. Results tapes; and
 - f. Electronic Records:
 - i. Ballot definitions;
 - ii. Cast vote records (ballot images), as applicable;
 - iii. Audit logs; and
 - iv. Election results.
2. The electronic files can be duplicated to another storage medium (ex. External hard drive, USB drive, CD, or DVD) to meet the retention requirement and allow for the external memory storage to be reused in the next election. Whatever medium you choose, you must ensure that you will have the hardware and/or software needed to read the data from the medium at a later date, if necessary.
3. A minimum of two duplicates of the electronic data must be retained, labeled and stored in a secure manner where any opening could be detected, and each placed in a different locked area with restricted access.
4. A precinct ballot scanner used in early voting may be deployed for use on Election Day only if the system provides the capability to retain a copy of the audit log(s) showing the activity during early voting.
5. The scanner system must provide the capability to view and print the audit log(s) as needed to retain the records listed above.
6. A DRE used in early voting may not be re-deployed for use on Election Day.
7. **Electronic data on a DRE, a DRE component and any external memory storage device used in conjunction with a DRE shall not be cleared until a backup of the electronic records has been performed.** Also, the electronic data on a DRE and any external memory store shall be preserved for 10 days after Election Day unless the DRE is required for another election before that time expires. If you need to use the equipment before the 10 day wait period has expired, you will need to seek a **written waiver** from the Secretary of State's office. If a written waiver has been issued, the results shall be preserved until the local canvass of the returns containing the election results from the DRE is complete and a backup of the electronic records has been done. Please [email to request your waiver](#).
8. A DRE shall remain secure if, before the security period prescribed above expires, the DRE's custodian receives a request to maintain security of the DRE for an extended period. This request must be in writing and signed by:
 - (1) a person eligible to contest the election or obtain a recount; or
 - (2) a public authority authorized to conduct a

criminal investigation involving use of the DRE in the election or a person designated by the public authority to make the request.

9. For detailed instruction on how to back up your election records with your specific version of your vendor' hardware and software, please contact your vendor for assistance.

Section 13 – Ballot Numbering and Ballot Signature/Initial Requirements

1. **Ballot Numbering Requirements:** The Texas Election Code establishes the following ballot numbering requirements in order to track and account for the total number of ballots used in an election, how they were used, in what locations, and to account for the ballot stock that was unused Any ballots used in a Texas election must be (1) numbered consecutively, beginning with the number “1”, (2) numbered so that a specific range can be linked to a specific polling place, and (3) must be distributed to voters non-sequentially in order to preserve ballot secrecy. (Secs. 51.006-51.008, 52.062, 62.009). Under Section 121.001 of the Texas Election Code, the other titles of the code apply to all voting systems except to the extent that a provision is “inconsistent with this title or cannot feasibly be applied” in an election using a voting system. Under Section 122.001(c) of the Texas Election Code, the Secretary of State has the authority to prescribe procedures related to voting systems. For jurisdictions using ballot marking devices, our office has authorized the following modified procedures for jurisdictions to comply with the ballot numbering requirements pursuant to Section 52.075:

a. **Pre-Printed or Hand-Numbered Numbers on Blank Ballot Stock:** A jurisdiction can meet this requirement by ordering blank ballot stock with pre-printed numbers or by using a hand-numbering machine to number blank ballot stock.

i. The ballots shall be tracked, distributed, and retained just as you would with a traditional pre-printed full ballot in accordance with Sections 51.006, 51.007, 51.008.

1. If you are using pre-numbered ballot stock, then the ballot stock must be placed face down and disarranged so that a voter may select a ballot with a random ballot number to preserve ballot secrecy.

ii. The remaining ballot stock cannot be used in a subsequent elections and must be retained with your precinct election records for the duration of the preservation period.

iii. With this system, you will continue to have your presiding judges fill out the [Ballot Register \(PDF\)](#) and the original and duplicate forms will be returned in the applicable envelopes.

1. We have approved modifications to the Ballot Register form upon request. If you would like to modify our standard form, [please send the form](#) for review.

iv. The jurisdiction can pre-number the ballots and split them into batches for each election, with each batch beginning with a number that ends in the number “1”. Those batches must be no smaller than units of 100, though a jurisdiction could batch in larger units if needed (1000, 10,000, etc.).

1. **Example:** For the November election, the jurisdiction could use ballots 1-1500, and for the May election that jurisdiction could then use ballots 1501-2400, and for the following November election the jurisdiction could use ballots 2401-4200, etc.

2. To use this batching method the jurisdiction will need to track which batches are assigned to each election through a master log that identifies the range of ballots that were used for each election. The jurisdiction must then track which ballots from that election's particular range are distributed to each polling place through the normal procedures.

b. **Ballot Tracking Through the Voting System Software:** The procedures below have been approved by the Secretary of State's office as a means of fulfilling ballot numbering requirements through the system software and/or the use of additional peripheral devices. Any vendor seeking to utilize a software solution for ballot numbering must have their solution approved by the Secretary of State.

i. **ES&S ExpressVote – Tracking Ballot Numbers Through the ExpressVote Activation Card Printer/ExpressLink Software**

1. Each ExpressVote Activation card printer that is assigned to a specific polling place will be given a two to three digit alpha code. This code will be printed on each Ballot Card as it is generated for the voter.
2. In addition to the alpha code, each polling place will print a randomly generated serial number between 1 to 99,999 on the card along with the identifying information related to the election.
3. The system will generate a report showing which ballots (based on their serial number) were used at each location. This report must be retained with your precinct election records.
4. For tracking purposes, you will continue to have the presiding judge fill out the [Ballot Register \(PDF\)](#), and the original and duplicate forms will be returned in the applicable envelopes. The ballots shall be tracked, distributed, and retained just as you would with a traditional pre-printed full ballot in accordance with Sections 51.006, 51.007, 51.008 with the exception of notating the serial number of the ballot ranges.
5. In the alternative, you will document how much blank ballot stock is sent to each location and how much blank ballot stock has been returned to you with your remaining election supplies. As this blank ballot stock does not have pre-printed ballot numbers on them, this blank ballot stock can be reused in subsequent elections.
6. **Additional Documentation Procedures:** At the conclusion of the election, the general custodian of election records should print or generate a full listing of all serial numbers issued at each corresponding polling place. This document shall be retained with the election records for the duration of the preservation period.

2. **Judge's Signature / Early Voting Clerk's Initials Requirements:** Paper ballots used with a ballot marking device must also have the presiding judge's signature on the back of the ballot for election day ballots, or the early voting clerk's initials on the back of the ballot for early voting ballots. A jurisdiction can comply with this requirement by pre-signing or initialing the ballots before distributing the ballot stock to the voters or before placing the blank ballot stock in the printer tray used by the ballot marking device. (Secs. 62.008, 85.0311)

Glossary

Term	Definition
Audit Logs	Recorded information that allows election officials to view the steps that occurred on the equipment included in an election to verify or reconstruct the steps followed without compromising the ballot or voter secrecy.
Ballot Image	Electronically produced record of all votes cast by a single voter. Also known as a Cast Vote Record (CVR).
Cast Vote Record (CVR)	Permanent record of all votes produced by a single voter whether in electronic or paper copy form. Used for counting votes. Also referred to as ballot image when used to refer to electronic ballots.
Central Accumulator System	Part of an Election Management System that tabulates and/or consolidates the vote totals for multiple precincts/devices.
Commercial Off-The-Shelf (COTS)	Commercial, readily available hardware devices (which may be electrical, electronic, mechanical, etc.; such as card readers, printers, or personal computers) or software products (such as operating systems, programming language compilers, database management systems, subsystems, components; software, etc.).
Data Storage Device	A device for <u>storing data</u> . It usually refers to permanent (non-volatile) storage, that is, the data will remain stored when power is removed from the device; unlike semiconductor <u>RAM</u> . Recording can be done <u>mechanically</u> , <u>magnetically</u> , or <u>optically</u> .
Direct Recording Electronic (DRE)	Voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program,

	and that records voting data and cast vote records in internal and/or external memory components. It produces a tabulation of the voting data stored in a removable memory component and/or imprinted copy.
Election Management System	Set of processing functions and databases within a voting system that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.
Firmware	Computer programs (software) stored in read-only memory (ROM) devices embedded in the system and not capable of being altered during system operation.
Logic and Accuracy Test	Testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles, etc.) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.
PCMCIA	<u>Personal Computer Memory Card International Association</u> – a portable computer card.
Public Counter	Counter in a voting device that counts the votes cast in a single election.
Results Tape	A Results Tape is the tape that is printed when the polls close. It is called a Results Tape since all contests and propositions are listed and have the resulting votes next to each name or question.
Voting Device	Any apparatus by which votes are registered electronically.
Voting System	The integrated mechanical, electromechanical, or electronic equipment and software required to program, control, and support the equipment

	that is used to define ballots; to cast and count votes; to report and/or display election results; and to maintain and produce all audit log information.
Zero Tape	A Zero Tape is the tape that is printed when the voting machine is first set up at the polls. It is called a Zero Tape since all contests or propositions should have zero votes next to each name or question.

KI:CP

#3a



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2022

The Honorable Matthew A. Mills
Hood County Attorney
1200 West Pearl Street
Granbury, Texas 76048

Opinion No. KP-0422

Re: Procedure for numbering election ballots and which officials are authorized to select the method for numbering ballots (RQ-0405-KP)

Dear Mr. Mills:

You ask several questions regarding a ballot-numbering requirement in section 52.062 of the Election Code to Hood County (the “County”) in light of the County’s recent purchase of new voting equipment.¹

Background

Article VI, section 4 of the Texas Constitution provides that “[i]n all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box[.]” TEX. CONST. art. VI, § 4; *see also Wood v. State ex rel. Lee*, 126 S.W.2d 4, 8–9 (Tex. 1939) (explaining that the word “ticket” in article VI, section 4 refers to a ballot). Consistent with the Constitution, the Election Code provides for voting by traditional paper ballots and by use of alternative voting systems. *See* TEX. ELEC. CODE §§ 52.061–.075 (subchapter C, “Form of Ballot”), 121.001–129.057 (Title 8, “Voting Systems”). Ballots used in a Texas election must be: (1) numbered consecutively, beginning with the number “1”; (2) numbered so that a specific range can be linked to a specific polling place; and (3) distributed to voters non-sequentially in order to preserve ballot secrecy. *See id.* §§ 51.006–.008, 52.062, 62.009.

You explain that the County recently switched from “electronic voting machines with no paper ballots, aside from mail-in ballots” to “a hybrid voting system, whereby voters scan a paper

¹*See* Letter and Appendix from Honorable Matthew A. Mills, Hood Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (May 3, 2021), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2021/RQ0405KP.pdf> (“Request Letter” and “Appendix,” respectively).

ballot, and votes are then registered electronically.”² Request Letter at 1. With the new voting system in place, you raise specific questions about the application of section 52.062, the section providing that “[t]he ballots prepared by each authority responsible for having the official ballot prepared shall be numbered consecutively beginning with the number ‘1.’” *See id.* at 2–3; TEX. ELEC. CODE § 52.062.

Permissible Methods for Numbering Ballots

Your first question concerns the method by which a number is printed on the ballot. *See* Request Letter at 2. According to the materials you submit, the Texas Secretary of State’s office instructed county election officials that they can achieve compliance with the numbering requirement of section 52.062 by either ordering “blank ballot stock with pre-printed numbers” or, specific to users of the Hart Verity Touchwriter ballot-marking device or Verity Print ballot-on-demand system, having the machine print the ballot with “a unique identifier.” Appendix at 1–2; *see also* Request Letter at 2. You also point us to an internal memorandum from the Secretary of State’s office concluding that the Hart Verity 2.4 voting system meets the ballot-numbering requirements of section 52.062.³ Nonetheless, you question whether the statute’s numbering requirement for “ballots prepared by each authority responsible for having the official ballot prepared” can be satisfied solely by using pre-printed numbers on blank stock, ruling out the option of machine-generated number printing. *See* Request Letter at 2; TEX. ELEC. CODE § 52.062.

Section 52.062 refers to “ballots prepared by each authority responsible for having the official ballot prepared” but does not require the preparation authority to personally number the ballots or otherwise specify a particular method for making the numbers appear on the ballot. TEX. ELEC. CODE § 52.062; *see also id.* § 52.002 (specifying that the authority identified for specified elections “shall have the official ballot prepared”). In chapter 52, concerning ballot form, content, and preparation, the Legislature expressly authorized the Secretary of State to “prescribe the form and content of a ballot for an election using a voting system, including . . . a voting system that uses direct recording electronic voting machines or ballot marking devices, to conform to the formatting requirements of the system.” *Id.* § 52.075(a); *see also id.* § 31.003 (directing the Secretary of State to provide “detailed and comprehensive written directives and instructions . . . to the appropriate . . . local authorities”). The Secretary of State’s interpretation of the law as allowing machine-generated numbering of ballots does not contradict section 52.062, given that the wording of the statute neither requires nor rules out any particular method of printing numbers on a ballot. *See Reynolds v. Dallas Cnty.*, 203 S.W.2d 320, 324 (Tex. Civ. App.—Amarillo 1947), *certified question answered*, 207 S.W.2d 362 (Tex. 1948) (acknowledging that various methods of ballot numbering may be utilized); *cf. Andrade v. NAACP of Austin*, 345 S.W.3d 1, 15 (Tex. 2011) (noting that the paperless electronic voting system under consideration numbered the ballots).

²You specify that Hood County purchased the Hart Verity 2.4 voting system. *See* Request Letter at 2. You also state that the purchased equipment “is essentially the same system” discussed in Attorney General Opinion KP-0170. *Id.* at 1; *see also* Tex. Att’y Gen. Op. No. KP-0170 (2017) (discussing electronic voting machines that also produce marked paper ballots).

³Memorandum to Keith Ingram, Dir. of Elections, Tex. Sec’y of State (May 18, 2020), <https://www.sos.state.tx.us/elections/forms/sysexam/chuck-pinney-hart-2.4.pdf>.

Thus, a court could find that the machine-generation method of numbering ballots, like the option of pre-printing numbers on blank ballot stock, complies with section 52.062.

Authority to Decide Ballot Numbering Method

Your second question is whether the decision for selecting the ballot-numbering method belongs “solely” to the elections administrator or whether the commissioners court has a role to play. *See* Request Letter at 2–3. You explain that “Hood County currently employs an elections administrator, as authorized under Election Code [section] 31.031.” *Id.* at 1; *see also* TEX. ELEC. CODE §§ 31.031 (authorizing the commissioners court to create the position of elections administrator), 31.032(a) (providing that a county election commission, made up of several county officials and others, appoints the elections administrator). Among other duties, an elections administrator performs “the duties and functions placed on the county clerk by [the Election Code][.]” TEX. ELEC. CODE § 31.043(2). For an election ordered by the Governor or a county authority, the county clerk is the “authority [that] shall have the official ballot prepared” except “as otherwise provided by law.” *Id.* § 52.002(1). Thus, for such elections taking place in Hood County, the elections administrator is the authority responsible for having the official ballot prepared, including selecting the ballot numbering method in accordance with section 52.062 and guidance from the Secretary.⁴

Under the Election Code, the commissioners court has the authority to adopt a particular voting system. *See id.* § 123.001(a); *see also id.* § 123.001(b)(1), (3)(A) (naming the commissioners court as the designated authority for certain elections). But ballot preparation is a separate duty. The statutes do not assign the commissioners court ballot preparation or general ballot oversight responsibilities. Instead, the Election Code places the duty of having ballots prepared on the elections administrator. *See id.* §§ 31.043(2), 52.002(1). Further, unlike with other duties, the Legislature directed the numbering of ballots “by each authority responsible for having the official ballot prepared” without indicating the necessity of approval by others. *Compare id.* § 52.062, *with id.* § 51.003(1) (directing the county clerk in an election ordered by the Governor or a county authority to procure election supplies and determine the quantity of the various types of supplies to provide to polling places “subject to the approval of the county election board”). Because the statutes do not vest ballot-preparation or supervisory authority in any other entity, the elections administrator has sole authority to select the numbering method.⁵

⁴The authority responsible for having the official ballot prepared depends on the type of election. *See* TEX. ELEC. CODE § 52.002 (authorizing different officials for an election ordered by the Governor or a county authority, a primary election, an election ordered by a city authority, and an election ordered by a non-city or non-county political subdivision). Because your question focuses on the authority of the elections administrator, we assume the context to be an election ordered by the Governor or a county authority, and thus we limit our analysis accordingly.

⁵You suggest that the elections administrator’s status as an employee, as opposed to an officer, has some bearing on the administrator’s authority to choose a numbering method. *See* Request Letter at 2. You cite *Krier v. Navarro*, which held that an elections administrator is a public employee rather than an officer for purposes of the constitutional limitation on the duration of a term of office. *See id.*; *Krier v. Navarro*, 952 S.W.2d 25, 30 (Tex. App.—San Antonio 1997, writ denied) (considering in an unrelated context whether an elections administrator exercised functions largely independent of the control of others); *see also* TEX. CONST. art. XVI, § 30(a). While an elections administrator may be an employee for some purposes, that does not affect the statutes’ delegation of ballot preparation responsibilities.

Statutory Directive that Ballots Begin with the Number “1”

Your last question concerns the statutory directive in section 52.062 that ballots be numbered consecutively “beginning with the number ‘1.’” Request Letter at 3; TEX. ELEC. CODE § 52.062. Your question is prompted by Election Advisory 2019-23, issued by the Secretary of State to all election officials on October 23, 2019, concerning procedures for electronic voting systems.⁶ Subsection 13.1 of the Advisory addresses several ballot numbering provisions of the Election Code, including section 52.062, as they apply to jurisdictions using ballot marking devices. *See* Advisory § 13.1. In the section about which you inquire, relating to the use of blank ballot stock with pre-printed numbers or a hand-numbering machine to number blank ballot stock, the Secretary of State has authorized the following modified numbering procedure, pursuant to section 52.075 of the Election Code:

iv. The jurisdiction can pre-number ballots and split them into batches for each election, with each batch beginning with a number *that ends in* the number “1.” Those batches must be no smaller than units of 100, though a jurisdiction could batch in larger units if needed (1000, 10,000, etc.).

1. **Example:** For the November election, the jurisdiction could use ballots 1-1500, and for the May election that jurisdiction could then use ballots 1501-2400, and for the following November election the jurisdiction could use ballots 2401-4200, etc.

2. To use this batching method the jurisdiction will need to track which batches are assigned to each election through a master log that identifies the range of ballots that were used for each election. The jurisdiction must then track which ballots from that election’s particular range are distributed to each polling place through the normal procedures.

Advisory § 13.1.a.iv. (emphasis added). You question whether “jurisdictions may conduct subsequent elections with ballot numbers starting higher than ‘1’” or whether ballots “should . . . begin with the number ‘1’ for each election” to comply with section 52.062. Request Letter at 3.

Article VI, section 4 of the Texas Constitution requires the Legislature to provide for the numbering of ballots. TEX. CONST. art. VI, § 4. The Legislature has done so through subchapter C (“Form of Ballot”) of Election Code chapter 52 (“Ballot Form, Content, and Preparation”). Within subchapter C, section 52.062 expressly requires the ballots to “be numbered consecutively beginning with the number ‘1.’” TEX. ELEC. CODE § 52.062. “[F]or an election using a voting system, including . . . a voting system that uses direct recording electronic voting machines or ballot marking devices” section 52.075, also in subchapter C, authorizes the secretary of state to

⁶Tex. Sec’y State Election Advisory No. 2019-23, <https://www.sos.state.tx.us/elections/laws/advisory2019-23.shtml> (“Advisory”).

“prescribe the form . . . of a ballot . . . to conform to the formatting requirements of the system.” *Id.* § 52.075(a). Thus, the Legislature designated the numbering of a ballot as part of its form, and provided a general rule as well as an alternate avenue, through the Secretary of State, for an election using a voting system.

Here, the modified ballot numbering procedure in the Advisory states that if batching is utilized, each ballot batch for a subsequent election must begin with a number “that *ends in* the number ‘1.’” Advisory § 13.1.a.iv. (emphasis added). Whether numbering each split ballot batch for subsequent elections with a number that ends in “1” is necessary to conform to the formatting requirements of the voting system is an inquiry that involves fact questions, which is beyond the scope of an Attorney General opinion. *See* Tex. Att’y Gen. Op. No. KP-0336 (2020) at 3. Accordingly, we cannot answer as a matter of law whether a jurisdiction may number split ballot batches for subsequent elections as proposed in the Advisory. But the language of section 52.075 makes it clear that there must be a connection between any ballot form or content modification and the formatting requirements of the voting system. *See* TEX. ELEC. CODE § 52.075.

S U M M A R Y

Section 52.062 of the Election Code provides that “[t]he ballots prepared by each authority responsible for having the official ballot prepared shall be numbered consecutively beginning with the number ‘1.’” A court could find that the machine-generation method of numbering ballots complies with section 52.062.

The Hood County elections administrator selects the ballot-numbering method for certain elections while the commissioners court selects the voting system.

We cannot answer as a matter of law whether a jurisdiction using a voting system for an election may number split ballot batches in certain instances as proposed by the Secretary of State in Advisory 2019-23 because it is a fact question beyond the scope of an Attorney General opinion. But pursuant to section 52.075 of the Election Code, there must be a connection between any ballot form or content modification such as the one set forth in the Advisory, and the formatting requirements of the voting system.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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#3a

Sec. 122.001. VOTING SYSTEM STANDARDS.

(a) A voting system may not be used in an election unless the system:

- (1) preserves the secrecy of the ballot;
- (2) is suitable for the purpose for which it is intended;
- (3) operates safely, efficiently, and accurately and complies with the voting system standards adopted by the Election Assistance Commission;
- (4) is safe from fraudulent or unauthorized manipulation;
- (5) permits voting on all offices and measures to be voted on at the election;
- (6) prevents counting votes on offices and measures on which the voter is not entitled to vote;
- (7) prevents counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevents counting votes for more than the number of candidates for which the voter is entitled to vote;
- (8) prevents counting a vote on the same office or measure more than once;
- (9) permits write-in voting; and
- (10) is capable of providing records from which the operation of the voting system may be audited.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 404 (H.B. [25](#)), Sec. 8, eff. September 1, 2020.

(c) The secretary of state may prescribe additional standards for voting systems consistent with this title. The standards may apply to particular kinds of voting systems, to particular elements comprising a voting system, including operation procedures, or to voting systems generally.

(d) Effective January 1, 2006, a voting system may not be used in an election if the system uses:

- (1) mechanical voting machines; or

(2) a punch-card ballot or similar form of tabulating card.

(e) For an election for federal office in which a state or federal court order has extended the time for voting beyond the time allowed by Subchapter [B](#), Chapter [41](#), a voting system must provide a separate count of the votes cast after the time allowed by that subchapter.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Amended by Acts 1987, 70th Leg., ch. 484, Sec. 2, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, Sec. 30, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1315, Sec. 49, eff. Jan. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 298 (H.B. [2900](#)), Sec. 1, eff. June 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 404 (H.B. [25](#)), Sec. 6, eff. September 1, 2020.

Acts 2017, 85th Leg., R.S., Ch. 404 (H.B. [25](#)), Sec. 8, eff. September 1, 2020.

Effective September 1, 2023, our lobby walk-in hours will be 9 a.m. – 4 p.m. (Central), Monday- Friday.



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Election Advisory No. 2018-30

To: County Election Officials

From: Keith Ingram, Director of Elections

A handwritten signature in blue ink, appearing to read "Keith Ingram".

Date: September 25, 2018

RE: Revised Procedures for the Partial Manual Count

Pursuant to Section 127.201(a) of the Texas Election Code (the "Code"), to ensure the accuracy of the tabulation of electronic voting systems, the general custodian of election records in an election in which an electronic voting system is used **must conduct a partial manual count**. The purpose of this advisory is to inform you of changes to the partial manual count that will begin with the November 6, 2018 election. These changes will affect **all counties** that use an electronic voting system for the counting of ballots.

Previous Exemption for DREs

In 2011, the Texas Election Code was amended to include Section 127.201(g) that stipulates that the partial manual count does not apply to the tabulation of electronic voting system results for a voting system that uses direct recording electronic voting machines ("DRE"). In 2012, the Secretary of State decided to exempt these DRE-only political subdivisions from conducting the partial manual count of mail ballots counted through an optical or digital scanner because of the possibility of revealing an individual's vote in certain precincts and also in recognition that mail ballots are often not stored by precinct. We will no longer be allowing this exemption.

New Requirements



Beginning with the November 6, 2018 election, ALL counties that tabulate their voting system ballots electronically will be required to conduct the partial manual count. The partial manual count will now include all applicable paper voting system ballots that were counted through an optical or digital scanner and reported as part of your unofficial results on election night.

For some past elections, the partial manual count only included election day ballots. Going forward, the following ballots will be included:

1. **Early Voting in Person Ballots** that were counted with a precinct scanner or central scanner.
2. **Early Voting by Mail ballots** that were counted with a precinct scanner or a central scanner.
3. **Election Day Ballots** that were counted with a precinct scanner or a central scanner.

Any ballots cast on a paperless DRE are exempt from the partial manual count. Any counties using a [Texas specific definition of a DRE system](#) for countywide polling place purposes are **not** exempt from the partial manual count. They **must** participate in the partial manual count.

How to Determine What Precincts are Included

General Election for State and County Officers, Primary Elections, and Constitutional Amendment Elections

In a general election for state and county officers, primary election, or election on a proposed amendment to the state constitution or other statewide measure submitted by the Legislature, the Secretary of State shall notify the election official, on the day after the election, of the selected precincts that must be manually counted. The Secretary of State will also designate which races must be counted as part of the partial manual count. You will receive a separate email prior to election day with specific instructions about logging into the SOS system to obtain information specific to this partial manual count. The election official shall begin the manual count within seventy-two (72) hours after the polls close. The count shall be completed no later than the 21st day after Election Day. (127.201(b)).

All Other Elections

The general custodian of election records shall conduct a manual count of all the races in at least one percent of the election precincts or in three precincts, **whichever is greater**, in which the electronic voting system was used. The custodian shall select the precincts at random and shall begin the count not later than 72 hours after the polls close. The count shall be completed no later than the 21st day after Election Day. (127.201(a)). Section 127.201(b) supersedes this section to the extent of a conflict.

Variation in Procedure for Mail Ballots

The partial manual count ONLY requires that ballots in selected precincts be counted. However, due to the concerns related to ballot secrecy in smaller counties and in sorting and storing ballots in larger counties, the SOS approves the

following optional modification in procedure.

Instead of only counting the selected precincts for early voting by mail ballots, entities can opt to conduct the partial manual count on **ALL** of their early voting by mail ballots. This will ensure that ballot secrecy is protected for smaller counties with fewer ballots. This may also be an easier process for larger counties that don't separate and store their mail ballots by precinct. **THIS VARIATION is OPTIONAL. The determination as to whether to count all early voting by mail ballots or only selected precincts is made by the General Custodian of Election Records. This decision should be reflected in writing.**

General Requirements

Confidentiality of Ballots: At all times relevant to the count, the designated election official shall take every precaution necessary to protect the confidentiality and security of the ballots cast by the voters.

Notice Requirement: On selection or notification, as applicable, of the precincts to be counted, the general custodian of election records shall post in the custodian's office a notice of the date, hour, and place of the count. (127.201(c)). Although the notice is posted in a public location, the partial manual count is not open to the public. Only authorized individuals may be present during the partial manual count.

Authorized Personnel: The General Custodian must be present along with any staff they designate to assist with the partial manual count. Each candidate in the election is entitled to be present and to have a representative present. A representative must deliver a certificate of appointment to the general custodian at the time the representative reports for service. The certificate must be in writing and must include:

1. The printed name and signature of the representative;
2. The election subject to the count;
3. The printed name and signature of the candidate making the appointment. (127.201(d))

Ballot Box Entry: The general custodian of election records is authorized to enter into the ballot box or container containing election records for the purpose of the partial manual count. When the count has been completed, the records shall be restored to their secured condition for the preservation period. (213.007). The general custodian of election records shall track chain of custody of ballot boxes, and document the breaking of any tamper evident seals used on ballot boxes

General Procedures for Conducting the Partial Manual Count

1. The general custodian shall identify by written order which temporary or permanent employees will participate in the partial manual count.

2. At the convening of the partial manual count, the general custodian of election records shall identify the applicable ballot boxes containing voted ballots subject to the partial manual count.
3. The general custodian with at least one individual of the counting team shall inspect the ballot boxes to verify that all locks and seals are intact.
4. The general custodian shall open or direct the participating employees to open the ballot boxes containing voted ballots. The breaking of seals **MUST** be documented.
5. The ballots will be removed from the boxes and the general custodian of election records shall order the counting teams to begin counting the applicable races.
6. The counting teams shall follow procedures applicable to hand counting of ballots. See, [Appendix A, Qualifying Voters Handbook \(PDF\)](#).
7. If there are discrepancies in the count, the election official shall attempt to determine the source of the discrepancy.

Procedures for the Partial Manual Count for Counties participating in the Countywide Polling Place Program:

1. For those counties that are participating in the Countywide Polling Place program, they have the option of completing the partial manual count in the traditional way by counting applicable ballots for a specific precinct or they may opt to conduct the partial manual count by polling place.
2. At the convening of the partial manual count, the general custodian of election records shall identify the applicable ballot boxes containing voted ballots subject to the partial manual count.
3. For the selected polling places, the general custodian of election records with at least one individual of the counting team shall inspect the ballot boxes to verify that all locks and seals are intact.
4. The general custodian shall open or direct the participating employees to open the ballot boxes containing voted ballots. The breaking of seals **MUST** be documented.
5. The ballots will be removed from the boxes and the general custodian of election records order the counting teams to begin counting the applicable races.
6. The counting teams shall follow procedures applicable to hand counting of ballots. See, [Appendix A, Qualifying Voters Handbook \(PDF\)](#).
7. The general custodian of election records shall compare the manual count from selected polling places with the **printed results tapes** for that polling place to verify the vote count for that race.
8. If there are discrepancies in the count, the election official shall attempt to determine the source of the discrepancy.

Reporting to the Secretary of State:

Not later than the third day after the date the count is completed, the general custodian of election records shall deliver a written report of the results to the Secretary of State's Office. (127.201(e))

The report shall contain:

1. The count of the specific race or races as provided on the summary report printed at the close of polls or the report generated for the audit;
2. The count of the specific race as manually verified;
3. An explanation of any discrepancy found.

The SOS will provide specific instructions closer to election day regarding how to identify the selected precincts or polling places, whichever is applicable for your partial manual count. Additionally, we will provide details as to the format of the report and how to submit it to our office.

If you have any questions or situations that are not covered by this advisory, please do not hesitate to contact the Elections Division toll-free at 1-800-252-2216.

KI:CA

#4a

From: [Kaleb Breaux](#)
To: ["Debbie Lindstrom"](#)
Cc: [Bruce Sherbet](#)
Subject: RE: Gentle Reminder :-)
Date: Tuesday, July 5, 2022 11:36:15 AM
Attachments: [image001.jpg](#)
[Ovals and Barcodes.jpg](#)
[image002.jpg](#)

Good morning Debbie,

Thank you so much for the gentle reminder. I am going to be able to provide the files that you have requested in a digital format. The files are too large to email, but I can upload them to our FTP site that we use to transmit data like this. You should be receiving a link to download the files shortly. The files will address items #1 and #2 in your email below.

In regards to item #3, it may be best to look at a voter's EDR (effective date of registration) to determine when they registered. Looking at a voter list that was downloaded from our election store, this would be column AD (effective_date). When a voter receives an effective date that means we have processed their application and it has gone up to the SOS for approval, and then back down to us to be active. The effective date should be helpful in what you are looking for there.

I was also able to check on a few other items from our meeting. See the list below:

- iDRAC8 Dell Remote Access Controller – as discussed in our meeting, this item was used for our ballot on demand printers. In previous versions of ElectionWare, files had to be exported from our data and sent up to ES&S for conversion to use in their Ballot On Demand software. After ES&S would convert those files, they would remote into a laptop that we used to print ballots from. This laptop is not connected to the tabulation system; it was a standalone system that live(s)(ed) in the Early Voting Clerk's office.
- Barcodes on ballot activation cards – I have attached a document that we received from ES&S that addresses the meanings of the barcodes that print on ballot activation cards.
- Equipment count – we have about 230 DS200s, 230 ExpressTouches, and 1800 ExpressVotes.

I am checking with Votec about our current version of VoteSafe. I should be hearing back from them soon.

That is all I have for now. Be looking for a link to download the files shortly.

Respectfully,

Kaleb Breaux
Voter Registration Coordinator
Collin County Elections
Phone: 972-547-1904
Fax: 972-547-1995
<https://www.collincountytx.gov/elections>

From: Debbie Lindstrom <dlindstrom7@gmail.com>

Sent: Tuesday, July 5, 2022 9:49 AM

To: Kaleb Breaux <kbreaux@co.collin.tx.us>

Subject: Gentle Reminder :-)

***** **WARNING:** External Email. Do not click links or open attachments that are unsafe. *****

Kaleb,

I hope you had a fantastic and restful vacation.

You asked me to gently remind you of the files that I was asking for during our meeting on

Here is a list:

(for all files: I do not want any personal information such as names or VUIDS)

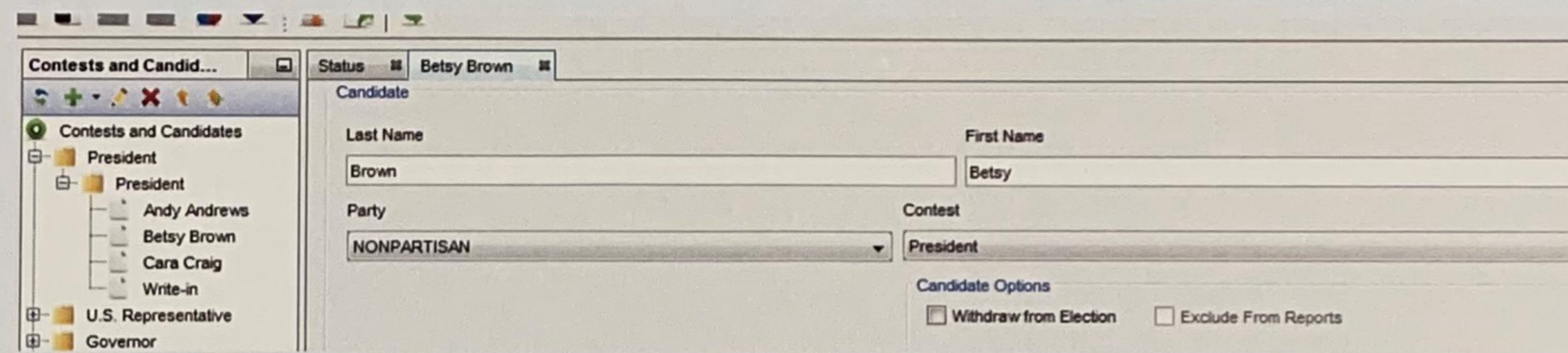
1. The Batch/Tabulator manifest: I am also requesting the Ballot Manifest Report (also known as the Tabulator Batch Report) for all ballots included in the tabulation of the results of the Nov. 3, 2020 general election. This report should include the information that specifies the method by which each ballot was cast. (ie: in-person, by-mail, provisional, absentee, etc.) Ideally, I would like to receive the reports via electronic transmission. However, if the data files are too large, and must be copied to a USB drive, I will happily supply the necessary device to the county in order to make that happen.
2. Audit Events Log for the November 3, 2020 general election: Please include all available info
3. I'm not sure if there is a report that would include the following information or what it would be called, but do you have info on when a voter registered, if there were any petitions, if voted was a mailer sent and if the mailer was returned. That may be part of the VOTEC/VEMACS? If you have that info for the 2020 General Election, could you send that as well.

I'm happy to bring you a flash drive if that is easier for you.

Thanks Kaleb!
Debbie

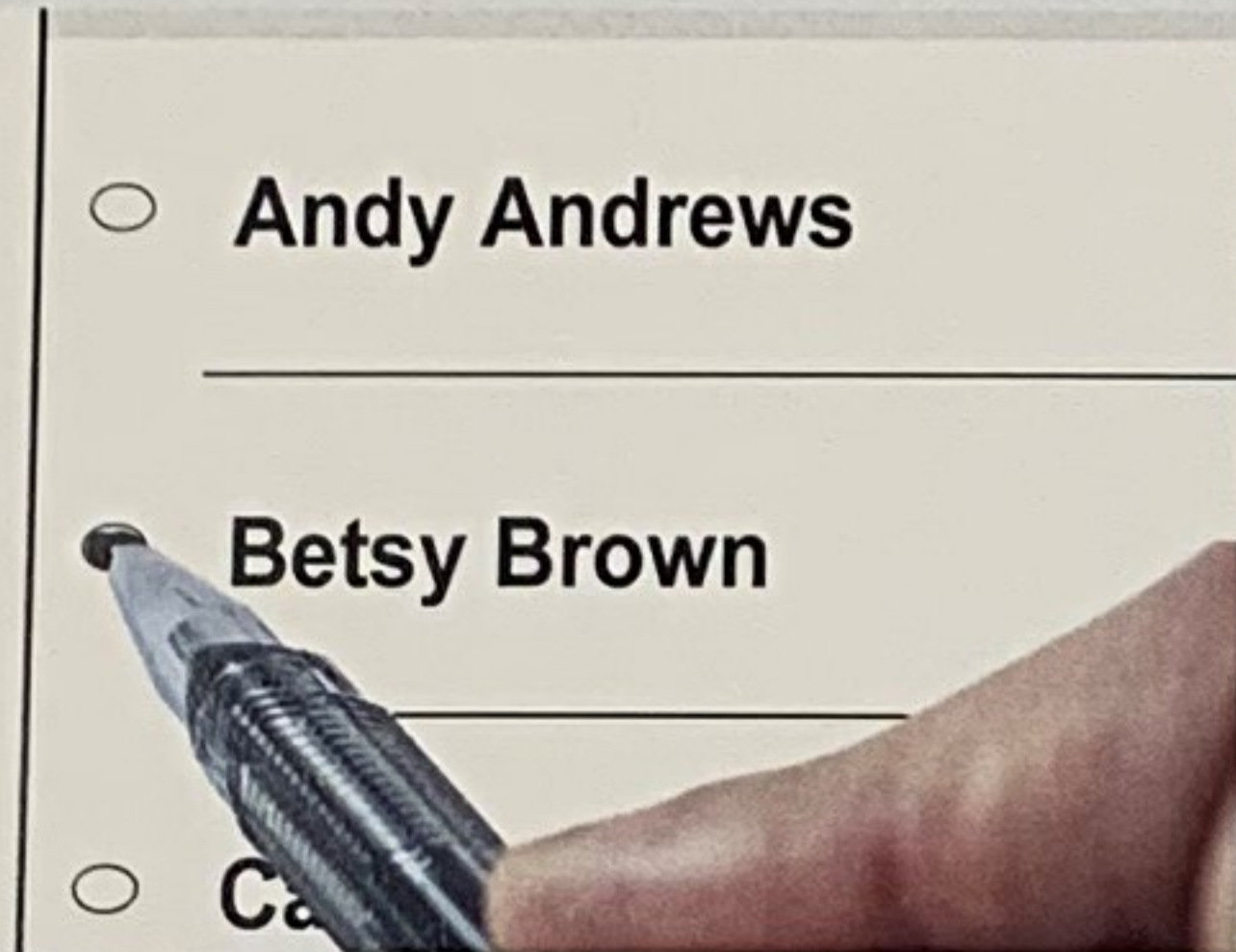
How It Works: Ovals & Barcodes

STEP 1: CREATE THE BALLOT



Candidate names are entered in a software application. This application generates the layout for the oval ballot on paper and for the ballot on the touch screen. It also creates the database that resides on the tabulator to record votes.

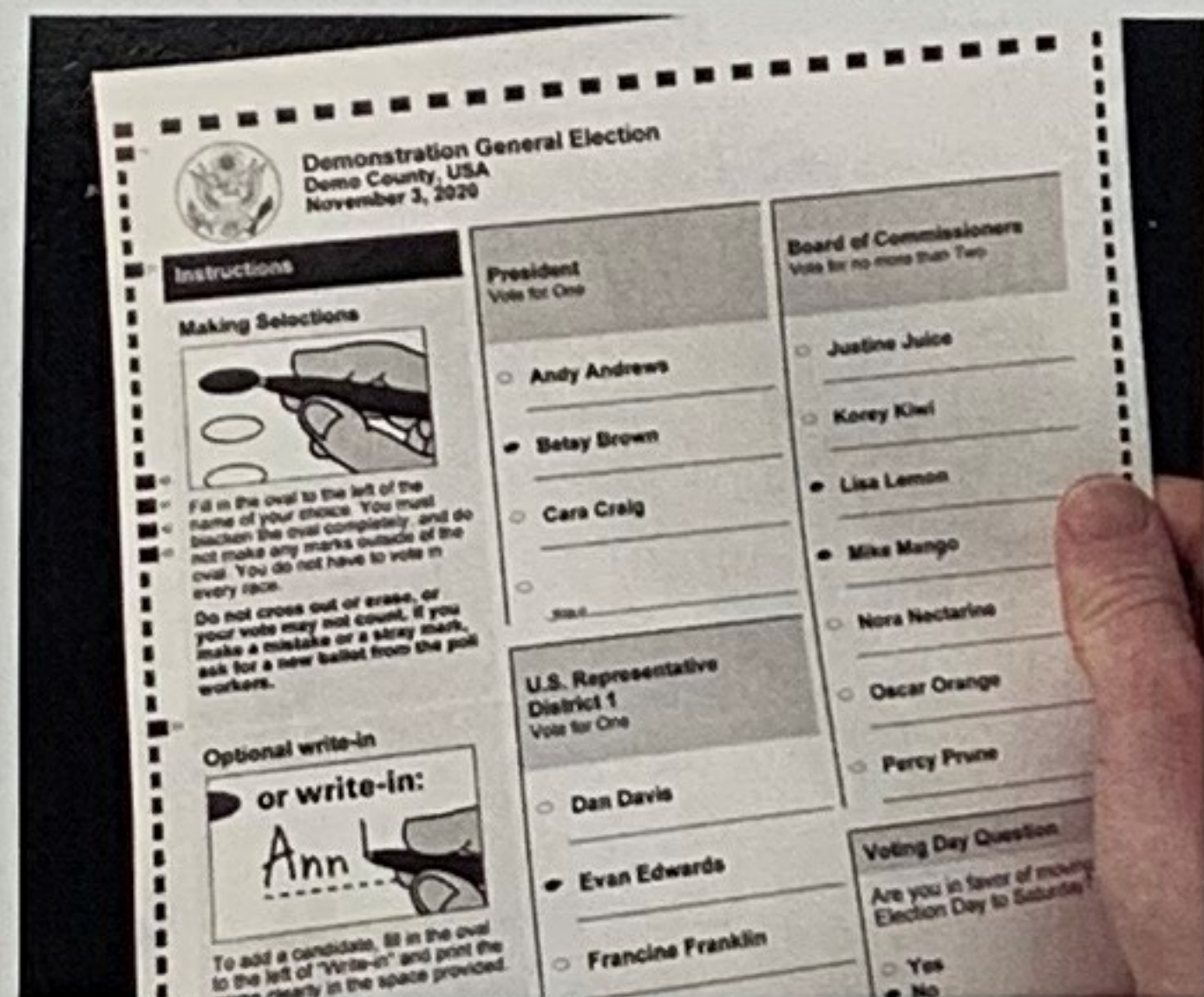
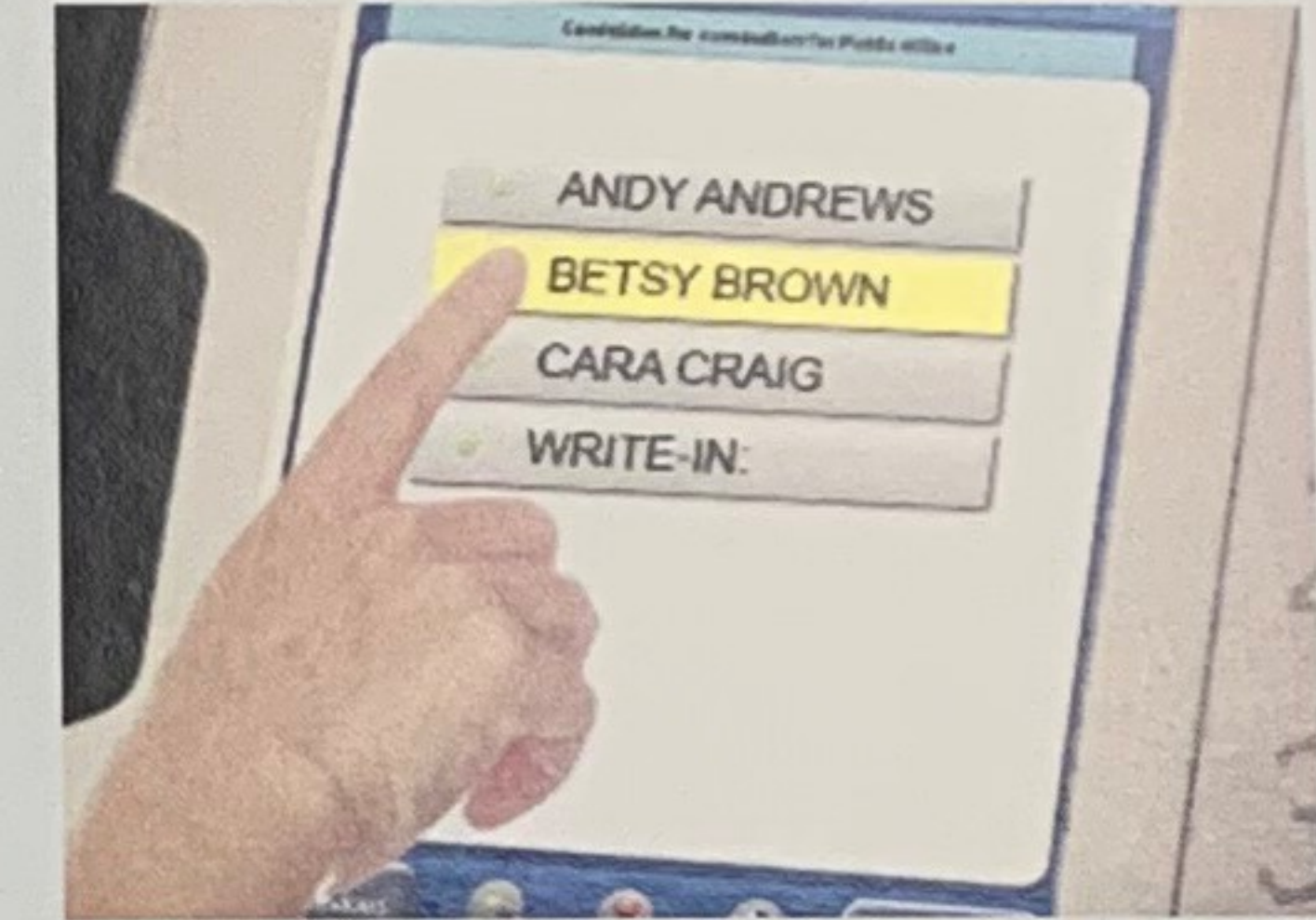
PEN WITH PAPER



Voter makes selections by filling in the oval next to the name of the candidate.

STEP 2: VOTER MAKES SELECTIONS

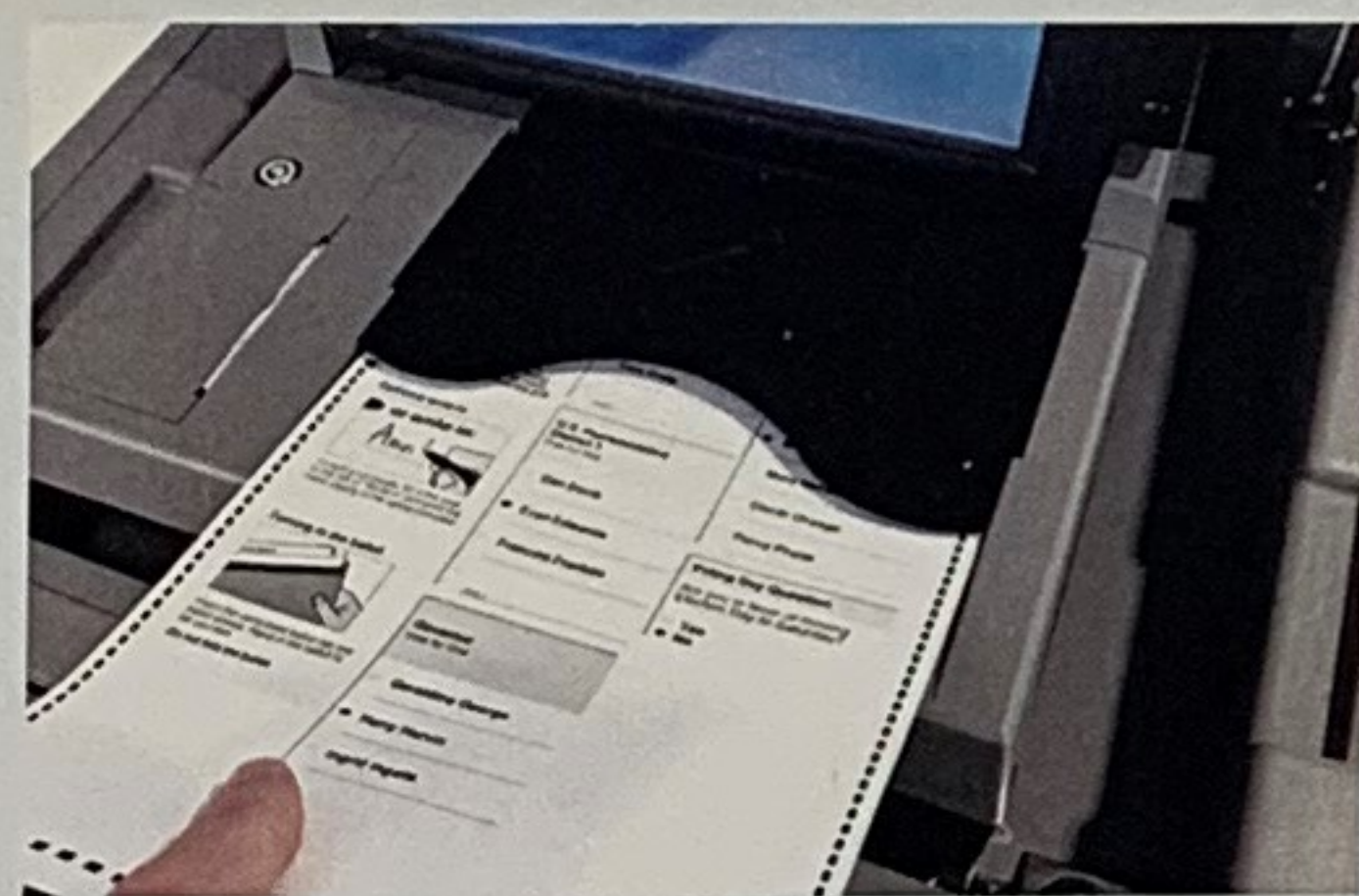
Voter makes selections by touching the candidate's name or by using an assistive device.



The voter reads the text to verify their selections.

STEP 3: VOTER VERIFIES MARKED BALLOT

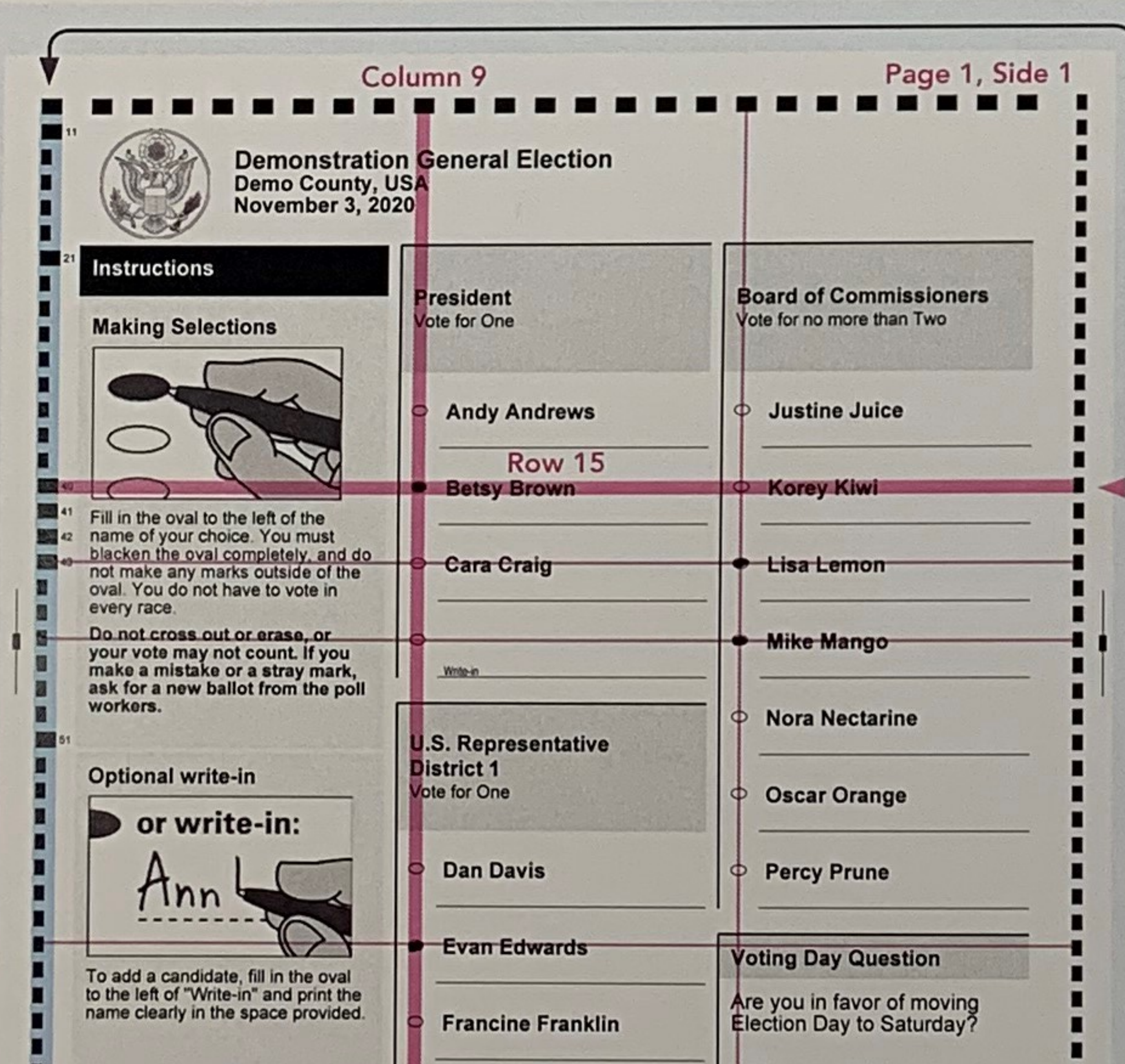
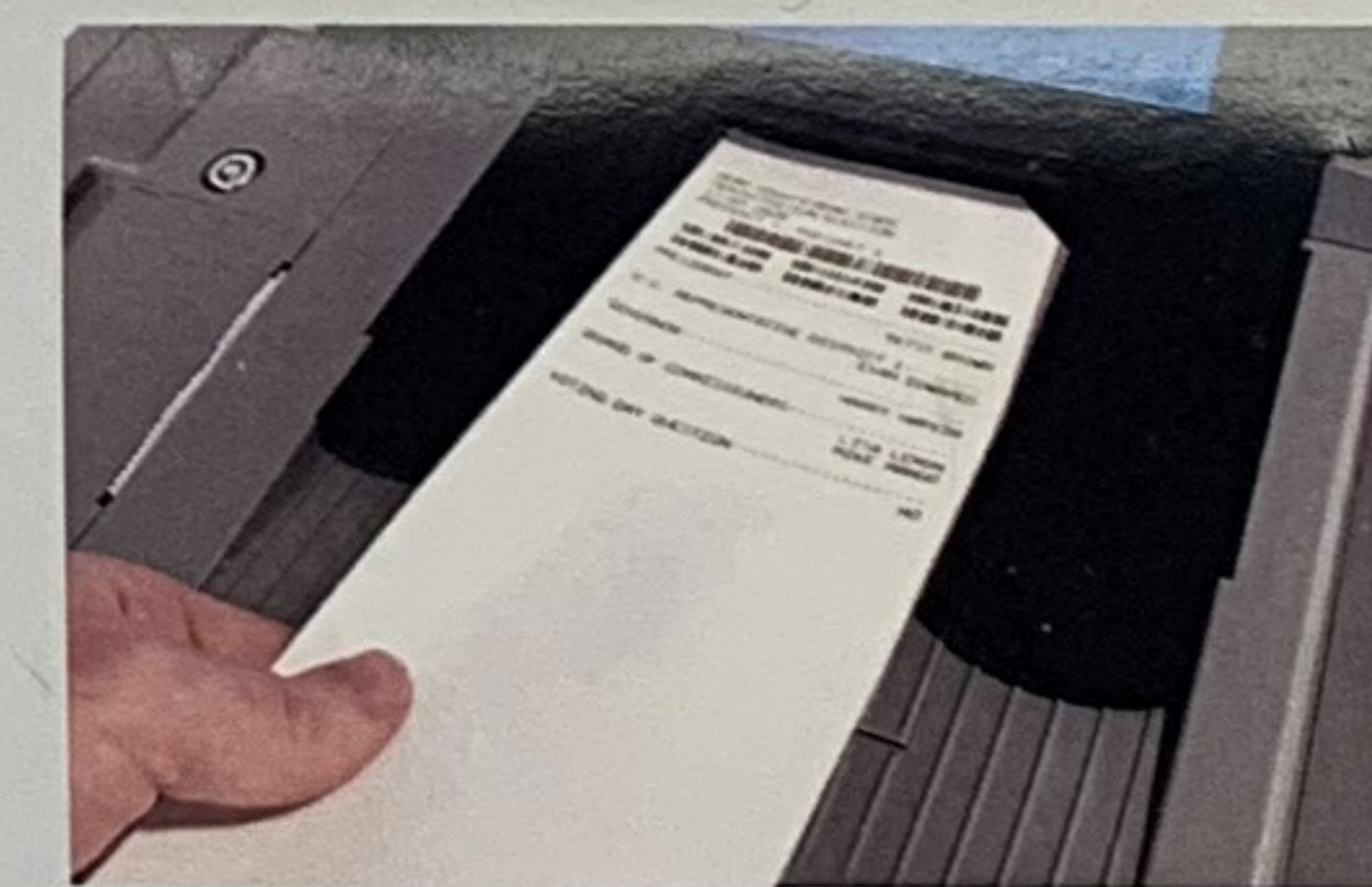
A marked ballot is printed. The voter reads the text to verify their selections.



Voter inserts the marked ballot into the DS200.

STEP 4: VOTER CASTS THEIR MARKED BALLOT

Voter inserts the marked ballot into the DS200.




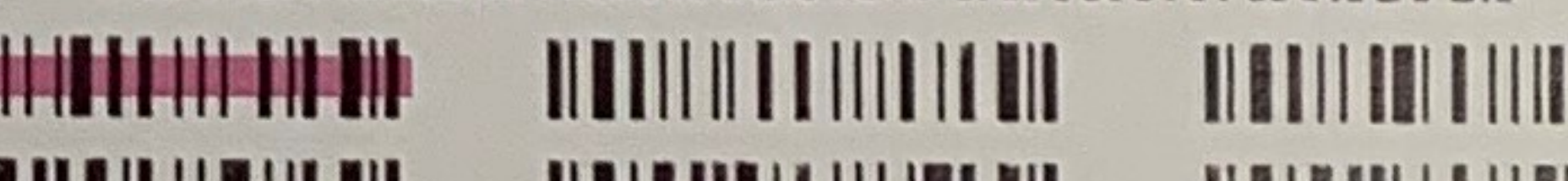

Column 9, Row 15, Page 1, Side 1 = 091511 = Betsy Brown


DS200 reads a filled oval which corresponds to the grid coordinates of the candidate's name. These grid coordinates are the same coordinates used in the barcode. The DS200 reads the grid coordinates and tabulates accordingly.

STEP 5: TABULATE THE BALLOT

The master barcode identifies the ballot style and contests to be tabulated.

DEMO COUNTY/DEMO STATE
DEMONSTRATION ELECTION
11/03/2020
PRECINCT 1, PRECINCT 1




 PRESIDENT ----- BETSY BROWN
 U.S. REPRESENTATIVE DISTRICT 1----- EVAN EDWARDS
 GOVERNOR----- HARRY HARVIN

 = 091511 = Betsy Brown

DS200 reads the barcode which contains the grid coordinates of the candidate's name. The grid coordinates in the barcode are identical to the grid coordinates on the oval ballot. The DS200 reads the grid coordinates and tabulates accordingly.

BOTTOM LINE: Ballots with ovals and ballots with barcodes are counted by the same tabulator in the same way. The human-readable text of the candidate's name appears on both ballots for voter verification and auditing purposes.

#9

Sec. 123.005. MULTIPLE METHODS OF VOTING AT SAME POLLING PLACE. (a) Except as otherwise provided by this code, only one kind of voting system may be used at a polling place in an election.

(b) Except as otherwise provided by this title, regular paper ballots may not be used at a polling place using a voting system.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

#10

Sec. 127.131. PREPARING RETURNS. (a) After the automatic counting of ballots for each precinct is completed, the presiding judge of the central counting station shall prepare the election returns for that precinct and sign the returns to certify their accuracy.

(b) In addition to the results of the automatically counted votes, the returns must include the results of the manually counted votes.

(c) The same number of copies of the returns shall be prepared as for a precinct polling place using regular paper ballots.

(d) The returns may not be certified until a valid automatic count is obtained or a manual count is completed, as appropriate.

(e) If the automatic tabulating equipment produces a printout that contains all information required to appear on the election returns, the printout with the addition of the manually counted votes constitutes the return.

(f) The presiding judge of the central counting station shall provide and attest to a written reconciliation of votes and voters at the close of tabulation for election day and again after the central counting station meets for the last time to process late-arriving ballots by mail and provisional ballots. The secretary of state shall create and promulgate rules and a form to facilitate compliance with this subsection. The form shall be posted on a website maintained by the county along with election returns and results.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Amended by:

Acts 2021, 87th Leg., 2nd C.S., Ch. 1 (S.B. [1](#)), Sec. 4.15, eff. December 2, 2021.

#11

H.B. No. 5180

AN ACT

relating to the public inspection of election records.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.012, Election Code, is amended by amending Subsection (e) and adding Subsections (f), (g), and (h) to read as follows:

(e) Except as provided by Subsections (f) and (g), an [An] election record shall be available not later than the 15th day after election day in an electronic format for a fee of not more than \$50.

(f) Beginning on the first day after the date the final canvass of an election is completed, the general custodian of election records shall make available for public inspection election records that are:

(1) images of voted ballots, if a county maintains images of voted ballots; or

(2) cast vote records.

(g) Beginning on the 61st day after election day, the general custodian of election records shall make available for public inspection election records that are original voted ballots.

(h) The custodian shall adopt procedures to ensure the redaction of any personally identifiable information of the voter contained on a ballot before making the voted ballot available for public inspection.

SECTION 2. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 5180 was passed by the House on May 6, 2023, by the following vote: Yeas 133, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 5180 on May 26, 2023, by the following vote: Yeas 138, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 5180 was passed by the Senate, with amendments, on May 24, 2023, by the following vote: Yeas 19, Nays 11.

Secretary of the Senate

APPROVED: _____
Date

Governor

#12

Sec. 61.014. USE OF CERTAIN DEVICES. (a) A person may not use a wireless communication device within 100 feet of a voting station.

(b) A person may not use any mechanical or electronic means of recording images or sound within 100 feet of a voting station.

(c) The presiding judge may require a person who violates this section to turn off the device or to leave the polling place.

(d) This section does not apply to:

(1) an election officer in conducting the officer's official duties;

(2) the use of election equipment necessary for the conduct of the election; or

(3) a person who is employed at the location in which a polling place is located while the person is acting in the course of the person's employment.

Added by Acts 2007, 80th Leg., R.S., Ch. 697 (H.B. [1921](#)), Sec. 1, eff. September 1, 2007.

Renumbered from Election Code, Section [61.013](#) by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 27.001(12), eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 175 (H.B. [1493](#)), Sec. 1, eff. May 27, 2009.



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 25, 1988

Honorable Oliver Lewis, Jr.
County Auditor
County of Bexar
224 Dwyer
San Antonio, Texas 78204

LO-88-62

Dear Mr. Lewis:

You ask whether a county election commission has authority to order disciplinary action against the county elections administrator. You provide the following background to your question:

On Tuesday, November 3, 1987 a general election was held in Bexar County. Due to incorrect estimations on voter turnout, many precincts found that they did not have enough voting machines to accommodate the voters. Long lines developed and became prohibitory to voting. Complaints from all parts of the County poured into the Office of the County Commissioners Court.

At a duly called meeting of the Election Commission held on November 9, 1987, the commission members discussed what action, if any, should be taken. The commission considered the possible termination of the County Election Administrator for misfeasance. After discussion, a motion in favor of suspension for one pay period was duly made, seconded and approved unanimously by the Election Commission as authorized pursuant to §31.033(c) of the Texas Election Code.

The commissioners court of each county is authorized -- but not required -- to create the position of county elections administrator. Elec. Code §31.031.

Section 31.032 of the Election Code provides that the position of county elections administrator is filled by appointment of the county election commission. §31.032.1

The election commission has a very limited function, and we think that it is a body of limited authority.² See Tri-City Fresh Water Supply Dist. No. 2 of Harris County v. Mann, 142 S.W.2d 945, 948 (Tex. 1940). Nothing in the relevant statutes expressly authorizes the election commission to discipline the elections administrator, and we do not think such authority can be implied from the powers and duties given to the election commission. Indeed, we think such authority would be inconsistent with the statutes governing election commissions and elections administrators.

The statutes governing elections administrators limit the authority of both the election commission and the county commissioners court in regard to the elections administrator. Although a mere majority of the election commission is necessary to appoint an elections administrator, once an administrator has been appointed, his or her employment may be terminated only by a four-fifths vote of the election commission and approval of that action by a majority of the commissioners court. Elec. Code §31.037. Furthermore, termination must be for good and sufficient cause. Id. The county commissioners court, not the election commission, sets the administrator's salary. The commissioners court also determines the number of persons the administrator may

1. The election commission consists of the county judge, as chairman; the county clerk, as vice-chairman; the county tax assessor-collector, as secretary; and the county chairman of each political party that made nominations by primary election for the general election for state and county officers preceding the date of the meeting at which the appointment is made. Elec. Code §31.032.

2. In your brief you cite the well-established proposition that a county commissioners court has only those powers expressly granted to it or necessarily implied for the proposition that the commissioners court, which has certain specified powers in regard to the elections administrator, has no authority to review a decision by the elections commission to discipline the administrator. You do not suggest, however, why the election commission would have powers in regard to the election administrator other than those specified in the Election Code.

Honorable Oliver Lewis, Jr.
May 25, 1988
Page 3

employ and the operating expenses of the administrator's office. §31.039. That statutory scheme indicates that the legislature intended the elections administrator to be largely independent of both the commissioners court and the election commission.³ It also indicates that the legislature did not intend the election commission to be involved in the day-to-day performance of the administrator's job. It would be inconsistent with those legislative purposes to conclude that the election commission had implied authority to discipline the elections administrator. Therefore, we conclude that the election commission has no authority to order disciplinary action against the county elections administrator.

Very truly yours,

Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/bc

cc: Bexar County District Attorney
County Judge
Elections Administrator

Ref.: RQ-1374
ID#3059

3. Other Election Code provisions attempt to insulate the administrator from partisan politics. Section 31.035 sets out restrictions on political activities by elections administrators. A county elections administrator may not be a candidate for or hold a public office or an office of a political party. §31.035(a). If an elections administrator does so, he or she vacates the position. Id. Also, a county elections administrator commits a Class A misdemeanor if he or she makes a political contribution or political expenditure or publicly supports or opposes a candidate for public office or a measure to be voted on. Conviction terminates the elections administrator's position.