

## ATTORNEY GENERAL INVESTIGATION REPORT

SPECIAL JOINT BOARD MEETING – May 19, 2014 – 10:00 a.m. – STT

Subject: Discussion Points – May 19, 2014

On December 2011 the Legislature passed ACT #7334 which amended 18 VIC Chapter 23, § 622 and which allowed the use of at-poll paper ballots during the primary and general elections. On November 6, 2012 voters were allowed to use either the electronic voting machines or at-poll ballots to register their choices for the various offices and boards, and the HEMP referendum.

DESIGNS of BALLOTS – pg. 3

The Supervisor of Elections drafted the various forms of paper ballots used in the 2012 general election. A Quorum of the Board Members reviews the design and content of the ballots and approves each ballot for its district.

The approved ballot is sent to the printer for use in the election.

At least four (4) members of the Board would approve each ballot by placing their initials on the document.

STX followed the procedures. At least four Board Members reviewed and signed off on each ballot.

STT, however, had no paper trail of having four (4) initials approving the ballots. Although there was a claim of four (4) members initialing the ballot no record could be found. The records only showed three (3) initials.

There is a need for STT and STX to use the same procedures and that four (4) initials are obtained to review and approve the ballots before they are sent to the printers.

The ballot layout for the paper ballots and the electronic ballots were identical, the instructions and design were not in all instances identical. The party symbols were not the same on the paper ballot as compared to the electronic ballot.

The party symbols were not consistently used. STT and STX used these symbols differently and it changed depending on the office being voted. Some positions on the ballot showed a symbol next to a candidate in one location but did not have the party symbol in other locations.

### DESIGNS of BALLOTS – Continued - pg. 3

The instructions were clear but the breakout on the ballot separating STT from STJ was not. Because STJ candidate were merged into the STT candidate listing the potential to over vote or to vote for too many STT candidates and not enough STJ candidates occurred. The separation of STT from STJ was needed.

Consistency and uniformity in the design and content of paper and electronic ballots are important to ensure voters are not disadvantaged because of the particular method of voting.

The paper and electronic ballots should be identical.

### AVAILABILITY OF SAMPLE BALLOTS – pg. 6

Ballots were available to the voting public before the elections. Sample ballots for the electronic voting machines were posted at the Election Offices on the election system's website and published in the local newspapers before the general election. It is unknown if the paper ballots were available to the public before the general elections. Sample paper ballots were not posted on the Election System's website, were not sent to various news outlets, and were not posted at the polling sites in the STT/STJ districts.

Sample paper ballots were not readily available or distributed to the public in the same manner as sample ballots for the electronic voting machines. The recommendation is that all the ballots to be used in an election with "SAMPLE" watermarked throughout the document be readily available and distributed to the public so that voters can become familiar with the voting instrument before the election.

This would help to increase voter confidence in using paper ballots and may help to reduce voter error or spoiled ballots.

Samples of both the electronic ballots and the at-poll ballots should be equally available to ensure that voters are not disadvantaged by using a particular voting instrument.

## PUBLIC EDUCATION – pg. 8

There was no extensive 2012 public education in the Territory before the general elections with focus on educating the public on how to vote using paper ballots or even to inform the public what an at-poll ballot looked like.

With re-introduction of at-poll paper ballots as a voting instrument greater public education was required. Public education is critical in any election where new initiatives or voting instruments are introduced.

It is important that election officials engage in extensive public education before the 2014 Election when new voting machines or tabulators will be used.

## FUNDING FOR ELECTIONS – pg. 8

Inadequate funding and the uncertainties regarding funding for the general election were partly responsible for many of the problems during the election cycle.

Because of inadequate funding the number of polling stations used during the primary election was reduced significantly in each district. With the implementation of two (2) initiatives the re-introduction of at-poll paper ballots and the e-poll books initiative – funding for public education was critical.

Adequate funding of the activities of the Election System and the availability of funds at a reasonable time before the elections is important so that election officials can effectively perform their duties and responsibilities to the public.

## TESTING/CERTIFICATION OF ELECTRONIC VOTING MACHINES – pg. 9

Voting machines testing of the electronic voting machines for the general election began on 10/27/2012, ten days prior to Election Day. STX established a schedule for the testing of the electronic voting machines to ensure at least two (2) members were present during the testing of each machine and they took turns observing the testing.

Board members reported at least two (2) Board members were present during the testing of each machine and at least four (4) members signed off on each tape produced after the testing of each machine. All 80 machines were tested and signed off on the tapes generated from each machine.

STT/STJ and STX are integrated and have to be ready at the same time.

#### TESTING/CERTIFICATION OF ELECTRONIC VOTING MACHINES – Continued - pg. 9

However STT/STJ ran into a number of delays and did not have consistent Board participation and sign off of the testing process. A uniform method of testing the machines in both election districts is needed.

The Board should establish a uniform set of guidelines for the testing and approval of electronic voting machines to ensure consistency in both districts. STX seemed to have created the necessary checks and balances that are so important to engender public confidence in the election process. The publication of the testing schedule of the electronic voting machines to the public, candidates and board members used in an election is important to allay fears and rumors, regarding the reliability and capability of electronic voting machines.

#### ELECTRONIC VOTING MACHINES – pg. 11

There are multiple security seals on each electronic voting machines, there are seals on the rear door latch, and seals on the open poll and closed poll buttons. The electronic voting machines used in 2012 General Election were secured by the Election System before the election. After the machines were transported to the polling precincts, they were guarded by security officers until voting began at about 7am on the morning of Election Day.

On the morning of the General Elections, election judges or workers broke the first seal to open the machines. Election workers removed the seal on the open polls button and then the machine performed a diagnostic test. An electronic voting machine was only used in the General Election if after the diagnostic test was completed the counter on the electronic voting machine showed a zero count, which means that no vote has been registered on the machine. Each election official present at the polling station then signed the paper tape to certify the zero count on the counter. Once the certification was complete, the voting machine was used in the General Election.

A review of the judges' books show that the electronic voting machines used in the General Election in both districts had a zero count at the opening of the polls and was certified by the elections officials.

Once voting was completed at the end of the day, the closed polls seal was removed. The elections officials would then press the polls closed button and the elections results in the memory cartridge would then begin printing on the paper tape.

Once the printing was complete, election officials broke the seal for the rear door and removed the memory cartridge and the paper tape from the machine. To close the polls and certify the process, election officials then signed the end of each tape taken from each machine which showed the number of votes executed on the machine.

The cartridge and the tape were then bound together with a rubber band and inserted in a bag which was then locked with a key. The bag with the cartridge and a paper tape were placed in a police vehicle along with an election judge and transported to the Election System headquarters.

The judge for each polling station remained with the bag at all times until the chain of command was broken by handing the bag and its content to a member of the district board.

The review showed this process was used in both districts.

The investigation revealed that this process was utilized in both districts.

Judges are required to make notation of any discrepancies or problems in the judges' book and there was no evidence of anything extraordinary or unusual that occurred on Election Day with respect to the electronic voting machines.

The judges are also responsible for the administration of the election on Election Day.

The public was able to observe the reading of the electronic cartridges by a live feed from the reading room of each district.

All cartridges used in the Territory must be recognized in the counting because the electronic voting system used in the 2012 election cycle is a unified system and all cartridges must be accounted for before the election can be deemed closed.

There were no major malfunction of the electronic voting machines that delayed or hampered voting on Election Day. A review of the judges' books confirmed this fact.

## SHORTAGE OF PAPER BALLOTS – pg. 13

The STX district experienced no shortage of at-poll paper ballots.

Each of the 14 polling stations in STX received between 100 to 300 at-poll paper ballots and judges replenished the number of paper ballots before they ran out.

All other polling stations had excesses.

The STX District carefully tracked the number of paper ballots issued, paper ballot used, and additional ballots requested.

It appears that in STX there was fairly accurate planning with respect to the distribution of paper ballots.

Members of the Board of Elections in the STX District pointed out that the staff at the election office decided how many ballots would be issued to each polling place based on the number of registered voters for each polling place and by applying a standard formula.

STT/STJ provided a stark contrast. An insufficient number of at-poll paper ballots were printed.

The Board members claim the Supervisor decided how many at-poll paper ballots were distributed to each polling station in the STT/STJ District.

It does not appear any meaningful discussions as to how to strategically distribute paper ballots occurred, taking into consideration the number of registered voters using a particular polling place and whether a particular polling place had a history of voters demanding paper ballots.

The judges at the various polling stations reflect the extent of and frenzy surrounding the shortage of at-poll paper ballots on Election Day. Due to the shortages experienced, some voters waited, some opted for the machine eventually and a few walked away. Some polling places ran out more than one time and provisional ballots were used in 5 instances and in some instances absentee ballots were used. Some made copies in black & white in an effort to provide ballots.

STX printed an additional 1000 ballots but they were not needed.

The poll judges and poll workers swift actions helped to alleviate some of these problems but not all of them.

The electronic voting machine votes were all counted on the night of the election. In STX the paper ballots and votes cast on the electronic voting machines were counted by precinct.

In STT/STJ District the votes cast on the machine were counted by precincts; however, the votes cast using paper ballots were not counted by precincts. The STT/STJ District batched the various types of paper ballots into groups of twenty five (25) irrespective of the polling place where the vote was cast.

The approach of the STX Board ensures some consistency in the counting process and it allowed the Board to analyze voting trends, patterns, problems and deficiencies to better plan for future elections.

The STT/STJ District did not start counting until the next day after elections.

Initially, the counting of the ballots was delayed because it could not be determined how many people were needed to commence counting, some board members had scheduling conflicts, and members were unsure as to whether a quorum was required to be present during the counting.

According to Board members, a board member was always present during the counting and a quorum was always present to begin the counting process. At least three Board Members were present to review disputed ballots and a board member was present during all of the counting.

Only a few Board members actually participated in the actual counting. Although some were present to form a quorum, they did not participate in the counting.

Members of the public were able to view the counting and were allowed in the counting room.

STX started to count paper ballots on the night of elections. Only Board members could resolve issues regarding the validity of a ballot and determine whether a vote should or should not be counted.

In 2009, Section 624 of Title 18 was amended and changed the arbiter of a disputed ballot or vote from inspector or judge to the Board of Elections. So the Board had to be present during the counting and had to discern voter intent when there was a dispute.

All members of the STT/STJ and STX District Boards uniformly agreed that counting ballots by hand is a tedious, labor intensive and time consuming task. The tallying of the votes cast by paper ballots is a costly process.

The Board members were paid a stipend of \$75.00 a day.

#### COUNTING OF BALLOTS - Continued – pg. 16

The Election System paid each tallier \$100.00 - \$150.00 per day to count ballots.

If paper ballots are to be used in the next election, to speed up the counting process, and to ensure greater accuracy and lessen human error, the districts should use some form of tabulator which can scan and count the paper ballots.

#### SPOILED BALLOTS - pg. 18

STX District reported that there were some 562 spoiled at-poll paper ballots most of which pertains to the senate race. There was a total of 2812 at-poll paper ballots. Resulting in nearly 20% of the at-poll paper ballots in the STX District were spoiled.

STT has not provided any summary report however general consensus among members is that there were many spoiled ballots particularly for the Senate race.

Review of spoiled ballots confirms that the major cause of ballot spoilage was symbol voting was a major cause in both Districts. Many voters voted for their party symbol then for additional candidates spoiling the ballot.

It appears that voters did not understand symbol voting or did not read the ballots carefully.

Paper ballots, historically, tend to have a greater percentage of spoiled votes than the electronic voting machines.

Votes could not be spoiled on the electronic voting machines used during the 2012 election cycle, as the machines do not permit votes to be spoiled.

Public education on how to correctly and accurately vote using paper ballots is even more critical.

## INTERNAL CONFLICT – Continued - pg. 19

There was obvious public conflicts during the 2012 elections.

The public rift between the Supervisor and his staff, the Supervisor and some board members, and the infighting among members of the boards did very little to build public confidence and goodwill in the integrity of the Election System.

Based on interview of Board Members, it also appears that personality clashes and internal fighting among members of the boards may have delayed some of the activities of the boards during the 2012 election cycle. A quorum was difficult at times because four (4) out of seven (7) board members were running as a candidate for some office in the primary or general election.

Those Board members running for office were unsure whether their participation in Board activities would potentially be a conflict of interest.

The Joint Board should establish uniform rules or guidelines as to what, if any, board activities members of the board who are running for re-election or for other offices can participate in so that the District Boards are not hampered in performing their duties.

It is incumbent upon the Joint Boards to assert its lawful authority and promulgate uniform rules applicable to both election districts where appropriate.

## COMPLAINTS – pg. 21

Several complaints were made in writing to the Supervisor and both district boards during the election cycle. No documentation has been provided which shows that the boards or the Supervisor responded to the complaints in writing or addressed the complainants' concern in any meaningful way. The District Boards and the Supervisor should make every effort to respond in writing to each written complaint.

## MEDIA ACCESS – pg. 21

There were allegations that the media did not have access to the counting of the ballots.

On election night, the STT/STJ District, the media could and did view the counting through a glass partition from an adjoining room and, during the counting of the paper ballots, the media was allowed access to the counting room. Also a live feed of the counting was broadcasted on local TV stations and the public was able to view the STT/STJ Board's activities from a live feed on the first floor of the Crystal Gade office.

In STX, the Board permitted only one representative of the press in the counting room on election night. The STX Election System staff members had received a number of threats in the period leading up to the General Election. The police department and the Supervisor of Elections decided to put into effect a security plan on the night of the election.

On election night, the STX Election System provided a 60 x 40 tent with three 60 x 60 monitors that gave a live feed of the counting of the ballots to the public and the media. A designated area was set aside for the media.

The Board agreed, based on complaints from the press about the distance from the actual activity that they would agree to allow one member of the press to enter the counting room. After about one hour, another media rep complained that they were not being provided access so the Board removed the first media rep and replaced them with a different media representative.

The count was put on hold until a media representative was present.

STX District Board provided a live feed of what was going on in the counting room and a representative of the media was able to observe the counting at all times.

In light of the threats received, the action of the Board was reasonable.

## ELECTION CERTIFICATION – pg. 23

The Election results were certified in both districts on the same day. Five members in STT/STJ and five members in the STX District Boards signed the certification for their respective Districts.

The tally sheets in each district for each type of paper ballot, excluding the Hemp Referendum, were reviewed and cross-checked with the certification results.

The tally sheets in the STT/STJ District reported for each senatorial candidate certified the tally sheets and total votes for each candidate were identical.

The Election System's office was responsible for preparing the certification document.

The Supervisor should have had in place a system of checks and balances to ensure that all votes cast and counted are included in the certification of the election results.

Additionally, the Board has a duty to ensure that the certified election results are accurate and cannot just rubber stamp the document presented for their approval.

Every vote cast must be counted and accounted for in the certification.

Despite the errors and after analyzing the missing votes, it has become evident that none of the successful candidates would lose their position even if all of the votes were included in the certification.

The difference between the certified and the at-poll count is negligible, and would not change the election result for the senatorial candidates.

The walk-in ballots, the vote count reported on the certification for the majority of the candidates exceeded the vote count on the tally sheets by 1-6 votes.