

On August 8, 2022 8:55 AM I sent the following email to the Sedgwick County Election Commissioner and our Sedgwick County Commissioners.

Good morning,

I had left a message on Friday with Shannon at the election office regarding the need for people to help with the post election audit. Angela returned the call around 6 pm on Friday. We discussed the need for people as well as some other aspects of the audit. During our conversation it was mentioned that the audit would be using the ballot images, not the actual paper ballots. Per section (b)(1) of the statute 25-3009 The audit shall be performed manually and shall review all paper ballots selected pursuant to subsection (a). If, as per the statute, paper ballots are to be reviewed, how can scanned ballot images be used?

25-3009. Postelection audit of votes cast; procedure; bipartisan board; selection of board members and of races for audit; notice; reports; use of results; additional audits; adoption of rules and regulations by secretary of state; effective date. (a) After an election and prior to the meeting of the county board of canvassers to certify the official election results for any election in which the canvassers certify the results, the county election officer shall conduct a manual audit or tally of each vote cast, regardless of the method of voting, in 1% of all precincts, with a minimum of one precinct located within the county. The precinct or precincts shall be randomly selected and the selection shall take place after the election.

(b) (1) The audit shall be performed manually and shall review all paper ballots selected pursuant to subsection (a). The audit shall be performed by a sworn election board consisting of bipartisan trained board members. The county election officer will determine the members of the sworn election board who will conduct the audit.

(2) The audit will review contested races as follows:

(A) In presidential election years:

- (i) One federal race;
- (ii) one state legislative race; and
- (iii) one county race.

(B) In even numbered non-presidential election years:

- (i) One federal race;
- (ii) one statewide race;
- (iii) one state legislative race; and
- (iv) one county race.

(C) In odd-numbered election years, two local races will be randomly selected and the selection shall take place after the election.

(c) At least five days prior to the audit, notice of the time and location of the audit shall be provided to the public on the official county website. The audit shall be conducted in a public setting. Any candidate or entity who is authorized to appoint a poll agent may appoint a poll agent for the audit.

(d) The results of the audit shall be compared to the unofficial election night returns and a report shall be submitted to the county election office and to the secretary of state's office prior to the meeting of the county board of canvassers. If a discrepancy is reported between the audit and the unofficial returns and cannot be resolved, the county election officer or the secretary of state may require audits of additional precincts. Once the audit has been completed, the results of the audit shall be used by the county board of canvassers when certifying the official election results.

(e) The secretary of state shall adopt rules and regulations governing the conduct and procedure of the audit, including the random selection of the precincts and offices involved in the audit.

(f) The provisions of this section shall apply to all counties for elections that take place after January 1, 2019.

History: L. 2018, ch. 116, § 7; July 1.

Regards,

Kari Sue Vosburgh

On August 9, 2022 10:55:04 AM CDT I received the following response. Note that legal counsel had been added to the list of recipients.

Good morning,

Thank you for the inquiry. Per Kansas Administrative Regulations 7-47-1 Audit Implementation (d) "Ballot images may be used for the manual audit if imaging technology exists during the tabulation process on election night."

Thank you,

Angela Caudillo | Election Commissioner | Sedgwick County Election Office

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On August 9, 2022 12:30:06 PM CDT I sent the response below

Good afternoon,

Although disappointing I appreciate the information.

Kari Sue
Vosburgh

On August 9, 2022 8:46:13 PM CDT I sent a second response noting it as URGENT – TIME SENSITIVE

Good evening or morning,

Because I was unaware of the existence of Kansas Administrative Regulation 7-47-1 prior to your response this morning I have been reviewing the Regulation. I understand what you are saying regarding section (d), but I still have an issue with the fact that in Statute, 25-3009 (b) (1) it says “The audit shall be performed manually and shall review all paper ballots selected pursuant to subsection (a). The word shall does not provide for an option, but is generally imperative or mandatory. Is it appropriate then, to write a Regulation that contradicts the Statute, which is what Regulation 7-47-1 does? One might speculate whether the author of this Regulation was intentionally trying to circumvent the election processes.

As I was reading Regulation 7-47-1 I paid particular attention to the first sentence. “The requirements of this regulation shall not apply to local question elections, mail-ballot elections pursuant to K.S.A. 25-431 through 25-441 and amendments thereto, or statewide constitutional amendments.” My understanding is that the Constitutional Amendment, Value Them Both, is one of the races being audited and therefore this Regulation does not apply and per 25-3009 (b)(1) paper ballots must be used for the audit of the Amendment.

I look forward to your response prior to the start of tomorrow's (8/10) audit at 9 a.m.

Kari Sue
Vosburgh