

STATE OF KANSAS

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January 10, 2012

Mr. Kris Kobach, Kansas Secretary of State
Memorial Hall
120 SW 10th Avenue
Building Mail

Dear Secretary of State Kobach:

At its meeting on January 3, 2012, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning notice of places and dates of registration; assessing documents submitted as evidence of United States citizenship; processing advance voting ballot applications; uniformed and overseas citizens absentee voting act, ballot distribution deadline in local mail ballot elections; postelection submission of photographic identification by provisional voter; election board worker assessment of validity of photographic identification documents; declarations of religious objection; and submission of photographic identification by permanent advance voter. After discussion, the Committee had the following comments.

KAR 7-23-14. In subsection (a) and paragraph (a)(1), election officers are to consider an individual's middle name in determining U.S. citizenship. Committee members request the procedure that must be followed by a potential voter who may have changed a middle name upon marriage or whose document reflect use different names in various documents based upon when the documents were issued.

KAR 7-23-14. In paragraphs (a)(2)(A), (B) and (C) on page 1 and in the corresponding paragraphs (a)(5)(A), (B) and (C) on page 2, the phrase "second, government-issued document" needs to be defined. Does the term "second" mean another or different? Does the term "government-issued" refer to a document submitted as evidence of United States citizenship or a document issued by a county or local unit of government, another state or even another country?

KAR 7-23-14. In subsection (b) there appears to be an unintended consequence. Paragraph (b)(1) directs the county election officer to accept and assess the citizenship document. Paragraph (2) directs the county election officer to add the applicant's name to the voter registration

list regardless of the result of the second assessment. The Committee suggests the agency specify the result if the citizenship document is not acceptable.

KAR 7-23-14. Paragraphs (a)(2)(C) and (a)(3) mention the processes of KSA 25-2309(m). Since KSA 25-2309(m) requires the applicant seeking assessment of the evidence submitted to prove citizenship on appeal to the State election board and the Board must give notice at least five days before the hearing date, does the process outlined in this draft regulation guarantee a decision prior to the applicant's vote being canvassed by the local canvassing board? In other words, will the appeal process allow the vote to count?

KAR 7-23-14. In paragraphs (a)(2)(B) and (a)(5)(B), the election officer is directed to allow the applicant to sign an affidavit. Where is the election officer directed to accept registration if the applicant provides such an affidavit?

KAR 7-36-7. In subsection (a), the phrase "if practicable" provides wide discretion to local officials in timing and means and should be clarified to provide more direction to local officials. The Committee notes that the phrase "if practicable" is rarely used in statute when defining required actions. In subsections (b) and (e), the phrase "by any means" similarly should be clarified to provide direction to local officials. It appears that nothing in this regulation would prevent a local official from attempting to contact an applicant via email only or phone only, regardless of whether such connections are available to the applicant. Committee members suggest local officials be directed to require that contact be attempted via U.S. Mail, telephone, and local individuals who may be able to indicate the whereabouts of a voter requesting an advanced ballot. (Contact information for someone known to the applicant could be included on the ballot application.)

KAR 7-36-7. Are sections (a) through (g) all required for an advanced voter's ballot to be considered?

KAR 7-36-8. In the history section, consider adding KSA 25-1225 to the list of authorizing statutes. KSA 25-440's authorizing section does not cover KSA 25-1215 as amended.

KAR 7-46-1. The Committee suggests local election officials should be directed to inform voters of the deadline for submitting a valid photographic identification document. In subsection (a), what other electronic means might be approved by the Secretary of State without amending this rule and regulation? The Committee notes that the opinion in *Bruns v. Kansas State Bd. of Technical Professions* (255 Kan. 728, 877 P.2d 391 (1994)) states that a policy that is not filed and published has no force and effect of law.

KAR 7-46-2. The Committee notes that subsection (c) provides review by a supervising judge if a voter and an election board worker have a dispute

as to whether proper identification has been provided, but subsection (e) provides that only the election board worker may decide whether to issue a regular ballot or a provisional ballot "if the election board worker determines that a voter is attempting to circumvent the photographic identification requirement." The Committee recommends that a supervising judge, not the election board worker, should make the determination described in subsection (e).

General Issues:

The Committee expresses its overall discomfort with the level of discretion given to local election officials in determining the acceptability of documents and in determining the identity of individual voters at polling places. The Committee notes that determinations of the State Election Board are exempted from the Judicial Review Act (KSA 2011 Supp. 77-603(c)(4)) and requests the agency respond to this concern. Where would an aggrieved potential voter learn of procedures for appealing to federal officials?

Committee members request information on the public education efforts undertaken by the Secretary of State's office regarding the SAFE Act. Committee members expressed concern regarding the public's ability to deal with the law and regulations if education efforts have not been widely undertaken.

The Committee reminds Secretary Kobach that if the above issues warrant substantial changes in the proposed regulations, those regulations must be brought before the Committee again.

The Committee notes that the Economic Impact Statement is incomplete because it does not estimate the costs of the regulations to local election boards and officials and requests inclusion of those costs in an amended Economic Impact Statement.

Prior to filing with the Secretary of State, review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Please indicate your agency's website address in the filing notice where proposed regulations can be located. In addition, if your agency accepts written comments by e-mail include this information in the public notice. Further, e-mail requests for public accommodation should be included as a part of the notice. Finally, verify that the adoption by reference of any materials included in the regulations is properly completed as prescribed in the *Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations*.

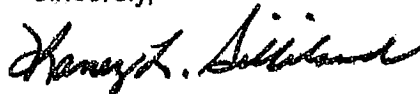
Please make this letter a part of the public record on these regulations. The Committee will review the regulations which the agency ultimately adopts, and reserves any expression of legislative concern to that review.

To assist in that final review:

- Please inform the Joint Committee and me, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes which have been made following the public hearing.
- Please notify the Joint Committee and me, in writing, when your agency has adopted the regulations as permanent; delayed implementation of the regulations; or decided not to adopt any of the regulations.
- Also, please indicate separately to the Joint Committee and me, any changes made to the proposed regulations reviewed by the Committee.

Based upon direction from the Committee, failure to respond to each and every comment contained in this letter may result in the request that a spokesperson from your agency appear before the Committee to explain the agency's failure to reply.

Sincerely,



Raney L. Gilliland
Assistant Director for Research

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