

Promoting Accounting and Transparency in your Primary Election

County Chair Election Law Seminar September 2023



Topics

- Role of the County Chair
- Role of the County Executive Committee
- Candidate Filings
- Appointment of Poll Watchers
- Electronic Voting Systems
 - General Considerations
 - Logic and Accuracy Testing/Testing of Tabulation Equipment
 - Chain of Custody Paperwork
 - Central Counting Station Plan
 - Reconciliation Paperwork
 - Post Election Auditing – Partial Manual Count
- Hand Counting
 - Understanding the Legal Requirements
 - Election Workers
 - Polling Locations
 - Timelines for Counting
 - Practical Considerations



Role of the County Chair

County Chair

- Serves on County Election Commission (31.032)
- Serves on County Election Board (51.002)
- Provides list of judges for appointment by commissioners court (32.002)
- Provides list of potential election day clerks for general election for state and county officers (32.034)
- Provides list of early voting workers (85.009)
- Appoints judges for primary election (32.006)
- Appoints poll watchers for elections with party nominee on ballot (Not primary) (33.003)



County Executive Committee

- Supervises conduct of primary (172.111)
- Approves primary contracts/joint primary agreements (31.092)
- Approves judges in primary election (32.006)
- Determines consolidation of precincts in primary election (42.009)
- Nominates to fill vacancies under certain circumstances (202.006)
- Adopts voting system in primary election (123.001)
- Conducts ballot drawing for primary election, if requested to by primary committee (172.082)
- Sets time and place for precinct conventions (174.022)
- Appoints poll watchers for elections with party nominee on ballot (Not primary) if county chair does not make an authorized appointment (33.003)



Things to Consider

- Who are the stakeholders in your election?
 - Voters
 - Local Candidates
 - Statewide Candidates
 - Presidential Candidates
 - State Party
 - County Election Officials
 - SOS (Expending Primary Funds)
- How do you communicate outcomes of your decisions?
 - Newsletters
 - Information Posted on Website
 - Communications with Candidates



Candidate Filings



Things to Consider

- Review applications in a timely fashion
- Enter information into the Candidate Filing System ASAP!
- Save copies of your correspondence when answering questions.
- Document your actions properly when making a decision on an application --- especially when it's a decision to reject an application.

Appointment of Poll Watchers



Things to Consider

- For Primary Elections
 - Party cannot appoint poll watchers!
 - Candidates can appoint poll watchers.
- For Elections in which Party Affiliation is on the Ballot (GESCO, Special Elections to Fill Vacancies in Legislature or Congress)
 - County Chair has appointment authority for poll watchers.
 - CEC can only step in if County Chair is not making appointments.
 - It's an either/or situation. Both can't make appointments.
- Include information in Training of Election/Judges and Clerks on how to work with Poll Watchers
 - Access to Chain of Custody Paperwork
 - Reviewing Seals and Locks
 - EVBB Access
 - CCS Access



Electronic Voting Systems

Considerations

- In paper based systems, the ballot of record is the paper ballot
- Voter makes decisions on how their ballot counts
 - Adjudication occurs either on Ballot Marking Device and/or when depositing ballot in scanner
- Redundancy in Electronic Systems
 - Three records of vote: Paper ballot, Ballot Image, Cast Vote Record
- Access to Ballot Images and Cast Vote Records
 - Immediately after canvass
 - Actual Ballots are available on Day 61 after election day



Logic and Accuracy Testing/Testing of Tabulation Equipment

- Published Notice
- Public Test
- Hash Validations
- Test of Tabulation Equipment is happening a minimum of three times
- Representative Sample
- Review Outcome of Tests!

Chain of Custody

- Two Person Verifications
- Ensure that training includes filling out Chain of Custody Paperwork
- Sample Forms
- Review paperwork at Equipment Intake for Early Voting/Election Day
- Folder/Container for paperwork commonly reviewed by Poll Watchers
 - Chain of Custody Forms
 - Register of Ballots/Ballot and Seal Certificate
 - Transfer Logs
 - Zero Tapes



Central Counting Station Plan

- Review Plan with county prior to posting
- Consider utilizing the CCS Plan Template created by the SOS
- Review the CCS Handbook to ensure compliance
- Have a plan on poll watcher access
- Validate that Tabulation Test 2 / Test 3 occurs at the CCS
- Livestreaming requirements (county of 100,000 or more)

Reconciliation Paperwork

- Work with CCS Manager prior to Election Day to understand how the reconciliation paperwork is completed.
- Learn about the records that are used for official reconciliation paperwork
- Consider adding daily reconciliation paperwork to Early Voting
- Consider adding polling place reconciliation forms to Election Day

Post Election Auditing

- Partial Manual Count is required for all elections
 - Hand count of a certain percentage of polling locations for election day/early voting in person/early voting by mail
 - Purpose is to validate the accuracy of the electronic voting systems
 - Not open to the public, but candidates and/or their representatives can be present for the partial manual count.
 - Educate your candidates about the partial manual count
 - Publicize outcome of partial manual count
- Risk-Limiting Audits Pilot Program
 - Applies statewide beginning 2026



Hand-Counting



General Considerations

- Authorized by state law, but requires specific procedures
- For a Primary election, decision to hand count is made by the county executive committee (Sec. 123.001).
- Rules on how to hand count are dictated by Chapter 65 of the Texas Election Code.
- No central counting stations or centralized counting for hand counts.
- ADA equipment is still required.
- **NOTE:** Section 276.019 provides that a public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code.



Polling Locations



Requirements

- Election Precincts (polling locations) are based on voter registration precincts.
- No combining precincts in a primary election. (SB 924)
- No Countywide Polling Places (Vote Centers) for a hand counted election.
- Limited consolidation is permitted only if it doesn't create more than one ballot style per precinct. (Secs. 42.005, 42.009)
 - Must prepare a single set of precinct returns and check-in records for the consolidated precinct
- Precinct returns are prepared at individual polling locations. (Sec. 65.014)
- Example: If a county had 100 voter registration precincts which resulted in 100 unique ballot styles, the county would be required to have 100 polling locations

Election Workers



Officers Who Perform Counting

- **Election Day Ballots**

- A hand count of ballots is performed by the presiding judge, alternate judge, and clerks at each of the election day polling locations. (Sec. 65.001).

- **Early Voting in Person Ballots**

- A hand count is performed by the presiding judge, alternate judge, and members of the early voting ballot board (EVBB). (Sec. 87.061).

- **Ballots by Mail**

- A hand count is performed by the presiding judge, alternate judge, and members of the EVBB. (Sec. 87.061).

- **NOTE:** Election Day polling locations must have a minimum of three workers. Although clerks may be replaced or additional workers may be brought in, the presiding judge must be available to continue performing their duties until all ballots are counted and precinct returns are prepared.

Procedures for Hand Counting



General Guidelines

- The procedures for hand-counting are dictated by Chapter 65 of the Texas Election Code.
- There is no legal authority to hand-count ballots using a method that is inconsistent with, or different from, the procedures prescribed by the Texas Election Code.
- Chapter 65 requires:
 - One “Caller” and other members of team act as “Talliers”
 - Caller will clearly announce the name of each candidate for whom a vote has been received.
 - Talliers will record the votes on their tally list as announced.
 - Three tally lists will be maintained
 - Team shall periodically compare tally lists to determine if there are discrepancies. If discrepancy exists, the ballots must be recounted and tally lists corrected.
 - Election Officers must sign off on the tally list they keep



Preparing Precinct Returns

- The presiding judge of the election day polling location is responsible for preparing precinct returns for that precinct. (Sec. 65.014).
- The presiding judge of the early voting ballot board is responsible for preparing precinct returns for early voting in person and early voting by mail. (Sec. 87.062).
- Those precinct returns must state:
 - The total number of voters who voted at the polling place (as indicated by the poll list);
 - The total number of votes counted for each candidate; and
 - The total number of votes counted for and against each measure.
- The returns must be prepared as an original and three copies. On completing the returns, the presiding judge shall sign the original and the copies of the returns to certify their accuracy. (Sec. 65.014).

Counting Time Frames

- Early Voting In Person Ballots/ Early Voting by Mail (EVBB)
 - May begin counting on election day
 - Counting must be completed no later than 24 hours after polls close
- Election Day Ballots
 - Counting may begin after the polls have been open for one hour and there are at least 10 ballots in a ballot box.
 - If counting begins while the polls are open, two ballot boxes shall be used on a rotating basis. When one ballot box is delivered to the counting teams at the polling place, the other box must be made immediately available for the deposit of voted ballots by voters. Before the ballot box is positioned for the receipt of marked ballots, an election officer must examine it, remove its contents, and lock the box. (Sec. 65.003).

Deadlines for Counting

- The counting of ballots shall be conducted continuously until all ballots are counted. (Secs. 65.002, 87.062).
- Upon completion of counting, the presiding judge shall prepare the precinct returns. The precinct returns **MUST** be delivered to the general custodian of election records no later than 24 hours after the polls close. (Sec. 66.053).
- An election officer commits a Class B misdemeanor if the officer fails to make the delivery of the precinct returns to the general custodian or if the officer fails to make the delivery by the prescribed 24-hour deadline. (Secs. 66.054, 87.062(b)).

Election Night Tabulation

- The general custodian prepares an unofficial tabulation that contains vote totals of all votes cast during early voting in person, early voting by mail, and election day ballots. (Sec. 66.056(a)).
- The general custodian shall periodically make a public announcement of the current state of the tabulation. (Sec. 66.056(b)).
- For a Primary Election, the General Custodian of Election Records is the County Election Officer.
- There is nothing in Texas law that authorizes poll watchers to be present for the preparation of the unofficial tabulation.

Logistical Considerations

- Number of election precincts (election day polling places) required for the election
- Number of election workers and availability of workers required for the hand count
 - Minimum of three per location, plus additional workers if someone is sick/does not show up on Election Day.
- Locations used as polling places
 - Consider the length of time needed for the polling location and the space provided
- Necessary supplies for a hand count
 - Minimum of four boxes per location, tables and chairs, tally sheets, marking instruments and seals for ballot boxes
 - ADA Equipment!
- Length of time necessary for tallying votes
- **RECOMMENDATION:** Use a sample ballot from a past election to mark up a minimum of 100 ballots. Conduct a hand tally for those ballots to determine time needed. Look at turnout from past elections to make projections on time needed to count ballots.
 - **EXAMPLE:**
 - Estimate of 6 seconds per race for marking 20 contests = 2 minutes per ballot
 - If turnout is 300 voters, then it will take 10 hours to complete count.
 - Don't rely on our example!! Try it out with your own workers and ballots.

Questions?

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