



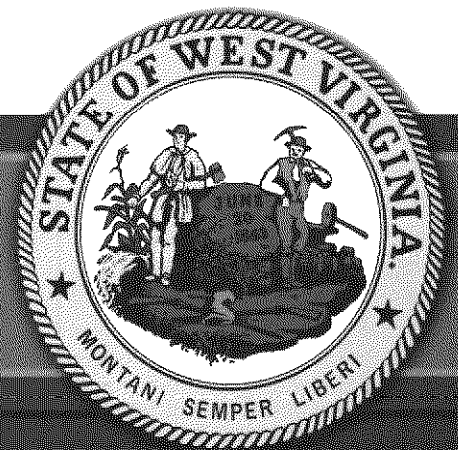
WEST VIRGINIA SECRETARY OF STATE'S OFFICE

ELECTIONS DIVISION

Procedural Audit
Of
Jefferson County's
2006 General Election
Issued September 4, 2007

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STATE OF WEST VIRGINIA




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Date: June 2007

To: Jennifer Maghan,
Jefferson County Clerk

From: Jason Williams, Manager
Elections Division 

Re: Jefferson County Procedural Audit

Enclosed you will find the conclusions of the audit performed by the Office of the Secretary of State on the 2006 General Election of Jefferson County as requested in your December 2006 letter. Because the Office of the Secretary of State is charged with ensuring fair and clean elections, it is important that each and every election procedure be followed with the voter's interest in mind.

There are a number of recommendations made within the following pages of this audit. Our office will be glad to assist you in implementation of each of them. We strive to make each election better than the last and hope to assist you in your endeavor to do the same.

If you have any questions feel free to contact me at (304)558-6000 or jwilliams@wvsos.com.

Table of Contents

Introduction.....3
Findings and Recommendations.....5
Jefferson County’s Response.....15

Introduction

The Secretary of State's Office (Office) received a letter from Jennifer S. Maghan, Clerk of Jefferson County (County), in December 2006, requesting that the Office perform a procedural audit of the County's general election procedures and make recommendations, as needed, to ensure that their election processes are carried out in an efficient, fair manner and in accordance with West Virginia State Code.

In order to achieve the objective stated above, the Office performed reviews and conducted personal interviews in the following areas of the election cycle: Voter Registration Procedures, Poll Worker Training, Equipment Storage and Preparation, Ballot Preparation, Campaign Finance and Election Night Procedures.

During the 2006 election cycle, an increased level of uncertainty with the election process was brought about by a number of issues. As with the rest of the country, the County was required to meet the deadlines of the Help America Vote Act which required an implementation of a new voting system. For the County, the choice was made to utilize the Election Systems and Software, Inc. AutoMARK and M650 Central Count Tabulating Device. The equipment would mark and count optical scan ballots respectively. With the use of new equipment, the County Clerk staff would be required to go through intensive training on new procedures, which included new training methods for poll workers. Other issues that appeared during the 2006 election cycle included problems with the precinct boundaries, equipment testing malfunctions, candidate filing issues and stakeholder miscommunication.

Because the County Clerk staff was relatively new to the election process and the equipment was new, developing procedures was difficult. The County Clerk staff not only had to establish an understanding of the correct rules and regulations to follow, they had to make certain corrections to existing policies and procedures while creating and maintaining an atmosphere of trust wherein voters had confidence that the ballots they cast would be counted in a fair and accurate manner. This became more difficult as the election approached and events culminated on

election night. As the 2006 election was reviewed, the audit uncovered areas requiring changes and areas which could be improved by implementing changes.

Findings and Recommendations

1. Voter Registration Procedures

One of the issues during the 2006 election cycle dealt with the movement of precinct boundaries and the placement of voters in correct precincts and voting districts. Therefore, it was very important to review the voter registration procedures, specifically when districts and precincts were to be changed. A review of the corrective actions was also necessary to verify that appropriate actions were implemented to ensure that all steps were taken to accurately reflect current districts as outlined in West Virginia Code.

Finding: When it was discovered that, during municipal annexations, several voters were assigned by a prior administration to the incorrect precinct, the County Clerk's Office was charged with correcting the precinct assignments. It was the aim of the audit to determine if the Statewide Voter Registration System (SVRS) played a role in the incorrect placement and if all affected voters were corrected prior to the 2006 General Election. As to the SVRS's role in the placement, the County's precinct configuration appeared to be correct as to county, municipal and delegate relationships prior to the identification of incorrectly placed voters. As to the incorrectly placed voters themselves, a detailed plan for correction was documented by the County and followed promptly and efficiently.

The County's primary SVRS users appear to have made the appropriate changes to street configurations and voter records to ensure proper placement in electronic poll books. A review of the canvassed provisional ballots from the 2006 General Election, however, revealed several occurrences involving the identified Precincts 2, 7, 12 and 22. This resulted in a number of provisional ballots cast during the 2006 General Election which was either due to misinformed voters or insufficiently trained poll workers.

Recommendation: The County should cross-reference provisional ballots with the list of previously misplaced voters to ensure that all voter precinct assignments have been corrected.

Special attention should be paid to the processes used to communicate the change to the voters and to where a possible breakdown, if any, might have occurred.

Finding: Although 15 sets of user credentials created for the County were discovered, a thorough audit showed no occurrence of SVRS access by users which was not approved by the County Clerk. During the interview period, the evaluator and the County staff reviewed the list of user credentials; obsolete users to be removed were identified. Primary and secondary users were identified for the evaluator and roles of the users were discussed. Primary user duties include, but are not limited to, voter registration entry and maintenance, electronic poll book production, and county data configuration. The secondary roles, as described for the evaluator, are consistent with expected increases in workload requirements during election timelines.

Recommendation: Primary and secondary users' systemic permissions and credentials should be verified through participation as a pilot county in an SVRS User Control Program, whereby the County Clerk will register and authorize users through the SVRS Coordinator at the WV Secretary of State's Office. (Program will be implemented for all counties.)

Finding: Active and inactive voters appear on all electronic poll books. 733 (1%) of approximately 32,000 registered active and inactive voters in the County do not have signature images scanned into the SVRS.

Recommendation: To prevent disenfranchisement, review voters with no signatures, obtain signatures where necessary, and scan images into the SVRS.

The County employees acting in primary SVRS user roles have demonstrated above-average proficiency and are considered advanced when compared to users statewide. An exceptional effort has been made to adopt and adhere to naming conventions, maintain clean and accurate data and increase awareness of the functionality of the SVRS. It is our opinion that the County Clerk's Office, under the current administration, should not erode citizens' complete confidence in its use of the Statewide Voter Registration System as it pertains to the maintenance of its voter registration records.

2. *Poll Worker Training*

The nomination and confirmation of election officials to serve on Election Day is a multi-step process. West Virginia Code §3-1-30 outlines a precise process, including the timeline for the nomination, appointment and training of these officials. The county executive committees must nominate qualified persons as election officials at least fifty-six days prior to the election. The governing body (County Commission) appoints election officials from this list no later than the forty-ninth day before the election. Within seven days after the appointments are made by the county commission, the county clerk must notify the chosen election officials by mail, and include a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election. County Clerk Jennifer Maghan mailed notification letters to potential election officials on August 8, 2006, or ninety-one days before the election.

West Virginia Code also requires that before any poll worker works in an election, he or she must attend a training session conducted by the county clerk using materials produced by the Secretary of State's Office in conjunction with the State Election Commission. The County Clerk must conduct an adequate number of training sessions and must schedule and complete them not less than seven days before each election. The County conducted five standard training sessions with class sizes ranging from twenty-five to fifty attendees. All standard sessions were completed by September 19, 2006, or forty-nine days before the election. Materials used in the training sessions included:

- Secretary of State's Poll Worker Training tape;
- Hands-on training with actual poll kit;
- Hands-on voting equipment training;
- Hand-outs created by County Clerk.

Sessions lasted from one-and-one-half to two hours. The County web site also includes a link to the Secretary of State's web site, where election officials could view the PowerPoint presentation on poll worker training.

According to the County Clerk's Office staff, the County does not experience many negative poll worker issues. They are generally able to staff each precinct with little or no difficulty, and feel their election officials are well trained. The Clerk's Office also follows up with a Polling Place Questionnaire mailed to each poll worker after the election to gather information as to how the election process may be improved.

During the research preparation for the audit and the interview process, we did not find any issues with the appointment or the training of poll workers. The only recommendation we have is for the County staff to continue the progressive work the County is conducting in the area of poll worker training and to share their methods and experiences with other counties.

3. *Ballot Preparation*

A county goes through a number of steps in the preparation of an election ballot. The steps commence during candidate filing. Candidates file Certificates of Announcement with the county clerk for county-wide elections and other local elections that are on the ballot(s). The county also receives a certified candidate list from the West Virginia Secretary of State's Office upon the completion of the statewide filing period. This process is done for the primary election, and once the election winners are certified, the list is then generated again for the general election.

A drawing for position on the ballot is held in races where there is more than one candidate within the same party. The information is then provided to Casto & Harris who produces the optical scan ballots for the County as well as the programming for the AutoMARK and the M650. An election file is produced which is loaded into the Election Systems and Software Unity program. This program combines the totals of the election and allows the county officials to print reports for the public and the media. The software and ballots were sent to the County for approval before final preparation. Although the County followed this process during the primary election, it ran into some issues relating to the audio files for the general election that caused extensive re-recording of the audio files and programming delays.

Finding: The County did not have a Standard Operating Procedure in place for proofing the ballot and audio files. The only checklist used was provided by the vendor.

Recommendation: The Office provides a checklist for proofing both the optical scan ballot and the audio files. If the County chooses not to use the state supplied checklist, then the County should provide a written standard procedure to the ballot commissioners on how to review and proof each ballot and audio file for corrections.

Finding: The communication between the vendor and the clerk's office was insufficient. This caused repeated re-recording of the audio files thereby causing programming delays.

Recommendation: Create a better method of communication between the County and the vendor to clarify the pronunciation of each candidate's name. This can be done by recording the names well in advance of ballot preparation. Work with the Office in promoting online proofing of candidate name pronunciation in future elections.

4. *Equipment Preparation/Testing*

West Virginia Code §3-4A-26 outlines procedures to follow in preparing voting equipment for the public test. Specifically, one week prior to the start of the counting of votes, the clerk of the County Commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and all measures. This test is open to representatives of the political parties, candidates, the press and the public.

Public notice of the time and place of the test is to be given not less than forty-eight hours nor more than two weeks prior to the test by publishing a Class I-O legal ad in the newspaper in the county involved. The test is to be conducted five times by processing two separate sets of a pre-audited group of ballots marked to record a predetermined number of valid votes for each candidate on each measure.

Immediately after the test is accurately completed, the county commission must send a certified copy of the program deck used during the test to the offices of the State Election Commission.

The actual program deck to be used for Election Day testing is to be certified by the County Commission and be free from error. It shall be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys are the same as the number of County Commissioners together with the County Clerk, with each having a single key in his or her possession.

The County contracted with the vendor, Election Systems and Software, to perform the public test. After receiving the test deck from Casto & Harris, the County added additional ballots to extend the test beyond the requirements of code at the recommendation of the Office. This provided a more thorough testing of the equipment. Upon commencement of the test, an immediate problem was discovered with the central counter, the M650; the results of the test did not match the results of the pre-tabulated test deck, which distressed the County Commission and the public. The problem was discovered later in the day and corrected. The test was conducted once again later that day. After the testing of the AutoMARKs, the test was certified as accurate and complete in accordance with West Virginia law.

Finding: The County relied on the vendor to provide for the testing of the equipment. The County staff should have performed the equipment test and relied on the vendor for support only in the case of an error.

Recommendation: County staff should receive additional training to adequately provide for the testing of each piece of equipment without the support of the vendor. The vendor should only provide onsite support to the equipment and not serve as the personnel in charge of the test.

Finding: The voting equipment and programming were not examined before the public test began. This step, as recommended by the Secretary of State's Office, would have assisted the County in identifying any obvious errors in the voting equipment. If this had been done, it would have been discovered that the programming in the M650 was from the primary election. In other words, the programming loaded on the equipment was from the primary election and had not been replaced with the current election which led to the incorrect tabulation of the test

deck. This incorrect tabulation could have been prevented upon a review of the material before the public test.

Recommendation: All equipment should be pre-tested before the public test to avoid any potential mishap during the public test. This allows for the County to correct any mistakes in the programming in advance of the final test. It also avoids any confusion on test day and allows the County staff to practice on the equipment before it is locked up for Election Day.

5. *Election Night Procedures*

During the initial research and the interview phase of the audit, concentration was placed on the activities that lead up to election night. The clerk and staff provided a walk through of the process, including the training of the staff, the material required and the information provided to the public. The process appeared to be well thought out and the County seemed to be well prepared for election night; however, there were very serious issues that could have been avoided.

Finding: Although written material was provided to each participant on election night, the clerk had not created written and recorded Standard Operating Procedures available for public inspection on election night. This would have prevented anyone from the media and the public from questioning the activities that occurred on election night and eliminated the constant interruption that occurred because of the need to clarify the process.

Recommendation: Create, record and make available to the public all procedures in a standard form. This should include all processes on election night and all preparation that would lead up to election night. We would also recommend that any election related procedures undertaken within the office have standard procedures which are well documented and available for public viewing.

Finding: Support on election night was inadequate when it came to the voting equipment. The vendor did not provide adequate paid site support as required by contract. The County was assigned a vendor representative who was not familiar with the equipment and created a problem

with the tabulation of election results. This allowed for confusion within the courthouse that led the public to perceive that the County staff had little knowledge of the workings of the equipment. This created a negative perception of the process and a vote of no confidence in the equipment, although the equipment functioned properly.

Recommendation: Meet with the vendor support prior to the election to determine the knowledge base of the individuals provided for site support. Require the vendor to send advance documentation of the individual's training for clerk approval. Ask the site support member to demonstrate knowledge of the equipment in advance, and reject that support person if he/she can not perform to standards. Require County staff to attend additional training to gain further knowledge of the equipment to reduce the need for onsite support of the vendor. Do not completely rely on the vendor to have total control of the tabulation of the votes on election night. The County must supervise all activities of the vendor and the support provided, including any corrective action taken.

Finding: The County did not have enough support teams available to process ballots in a timely fashion. During the processing of the ballots, each precinct was processed separately as required by law. However, the County did not have enough resolution teams to adequately process the amount of machine rejected ballots. This led to a long process that created an atmosphere of mistrust. After repeated attempts by the Office to suggest that the County add additional teams, the County continued to ignore the request and the delay extended election night further into the next morning.

Recommendation: The County should have additional support teams available and trained for election night. It is strongly recommended that enough teams be available to keep a quick pace throughout the evening. Training sessions shall be held to advise each member of each team of the duties they shall perform. It might also be necessary to provide cross training to keep up with the work load of a heavier election turnout.

Finding: The County allowed the vendor to continue to work on the equipment after the realization that the support staff had inadequate knowledge of the equipment, causing multiple malfunctions. The County continued to utilize the Unity Software after it malfunctioned instead of diagnosing the problem and implementing corrective procedures.

Recommendation: If at any point during tabulation, equipment becomes inoperable, or if the staff performing the tabulation is found to be under-trained, the County staff shall immediately remove the staff or equipment from the equation until it is repaired, replaced, or addressed. This will avoid any confusion in the accuracy of the results.

6. *Campaign Finance*

In review of the campaign finances of the 2006 candidates who are required to file with the Office of the County Clerk, there were indications that full compliance by the political committees had not been requested. The findings which follow in this section detail the deficiencies in administrative procedures used to ensure full compliance with West Virginia Campaign Finance Laws and Regulations.

Finding: Correspondence with late or non-filing candidates or political committees is not sufficient to ensure full compliance with West Virginia Campaign Finance Laws and Regulations. No procedure was in place for official notification to committees not filing reports in a timely manner.

Recommendation: Within one to two weeks after the close of a filing period the County should send correspondence to every political committee that has not filed a campaign finance report. Contents of the correspondence should include which report is delinquent, the date it is due, and notification that a mandatory referral to the Office of the Secretary of State will happen at 40 days of delinquency, as stated in WV Code §3-8-7(a).

Finding: Notice of a political committee's failure to file is to be referred to the Office when the delinquency reaches 40 days. Procedures indicated no official notification to the Office of a political committee's failure to file after 40 days, as stated in WV Code §3-8-7(a).

Recommendation: After proper notification has been given to the political committee of failure to file after 40 days of delinquency, a list of all non-filing committees must be sent to the Office.

Finding: Procedures followed during the 2006 Election Cycle indicated an absence of audit reviews for the financial statements that had been filed. Without a proper audit of the financial reports filed, ensuring the compliance with provisions of West Virginia Campaign Finance Laws and Regulations is not possible.

Recommendation: The County should adopt and implement campaign finance report audit procedures, as required by WV Code §3-8-7(b)(4), to ensure all relevant parties adhere to the regulations on campaign expenditures and contributions, as well as the additional reporting requirements such as committees taking loans, using advertising agencies or third party expenditures, hiring campaign staff and reimbursing volunteer campaign workers.

Additional recommendations:

To provide for greater public access to the campaign finance reports filed, it is recommended that the reports be posted on the County Clerk's website for public access. Greater access to this information will create a higher level of transparency and accountability for political committees in the county.

To ensure the timely filing of campaign finance reports, the County Clerk should issue a two-week reminder to every committee that may need to file a report outlining reporting dates, information that is required in the campaign finance report and the address of the County Clerk's Office where the report is to be filed.

It is also recommended that a seminar be held for representatives of all political committees to attend regarding campaign finance laws and regulations and the reporting requirements for each committee. This will provide an opportunity for the committees to interact with the County, raise awareness of the procedures to be followed by the County Clerk's Office, and establish what is expected of each political committee during the election cycle.



Jennifer S. Maghan, County Clerk

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August 20, 2007

Mr. Jason Williams
Building 1, Suite 157 – K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305


Dear Mr. Williams,

Thank you for the opportunity to respond to the draft version of the Procedural Audit issued June 12, 2007.

During the Audit, our office found that you and the accompanying staff members from the Secretary of State's office were extremely professional and helpful in advising the best procedures to ensure top notch elections in Jefferson County. Many of the findings listed in the Draft version of the audit have been corrected due to our desire to be compliant with State and Federal Election laws.

If there are any further questions regarding our response to the recommendations, please contact me at (304-728-3347) or jmaghan@jeffersoncountywv.org.

Very Truly Yours,


Jennifer S. Maghan

Jefferson County Clerk's Response to Findings and Recommendations

To the Draft Copy of the Procedural Audit Report dated 12 June 2007

1. Voter Registration Procedures

Finding: Pg. 5

Working on Correction: Our office is in the process of identifying and correcting the Precincts that have changed due to Municipal annexations. A joint effort between the Clerk's office and the County's GIS specialist will ensure that all voter data is checked electronically and that all affected voters will be notified if there is a precinct change. Our timeline ensures that all data will be accurate no later than November 2007.

2. **Finding: Pg. 6**

CORRECTED: All SVRS user names and passwords were identified with the assistance of Dave Tackett during the Procedural Audit. Only during election time will alternate user names with limited access (look up only) be given to our poll workers.

Finding: Pg. 6

CORRECTED: All Voter Registration cards on file in our office have been scanned for signatures and the SVRS has been updated as of 1 August.

3. **Finding: Pg. 10**

CORRECTED: Clerk's Election Staff will have On-site Training and become certified operators of the ERM, M100 and M650 Election Equipment. Our County will not rely on ES&S's on-site support for future elections. Technical staff within the Clerk's office has been identified and will assume the responsibilities of the election equipment as a part of their job duties during an Election.

4. **Finding: Pg. 11**

CORRECTED: A pre-test has been added to the election time-line/procedures to ensure that all equipment is tested prior to early voting which will allow time to correct any mistakes or technical problems.

Finding: Pg 11

CORRECTED: Standard Operation Procedures will be placed on-line via the Clerk's website as well as posted on the walls of the Courthouse Election night.

5. Finding: Pg. 12

Corrected: Clerk's Election Staff will have On-site Training and become certified operators of the ERM, M100 and M650 Election Equipment. Our County will not rely on ES&S's on-site support for future elections. Technical staff within the Clerk's office has been identified and will assume the responsibilities of the election equipment as a part of their job duties during an Election.

Finding: Pg 13

CORRECTED: A timeline for all filings will ensure that candidates are notified if their filings are delinquent and correspondence will be sent to each individual candidate, committee member or Treasurer.

6. Finding: Pg 14

CORRECTED: A seminar for candidates, representatives, political committees and treasurers will be held the second week of January to educate parties on issues regarding campaign finance laws, regulations and reporting requirements.

