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September 27, 2023

ATTORNEY GENERAL OPINION NO. 2023- 9

The Honorable Francis Averkamp  
State Representative, 61st District  
State Capitol, Room 187-N  
Topeka, KS 66612

Re: Elections—County Boards of Canvassers—Recount; When; Recount Procedure

Synopsis: If an election recount requestor asks for a hand count of the original paper ballots, the recount must be conducted in that manner and not by using ballot images instead. Cited herein: K.S.A. 25-2912; 25-3107.

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Dear Representative Averkamp:

As a member of the Kansas House of Representatives, you ask whether, in election and ballot issue recounts, the person requesting a recount is entitled to demand a hand recount of the original paper ballots or whether the county may substitute digital or photographic images of the ballots.

K.S.A. 25-3107(b) authorizes recounts of elections occurring within a single county:

[I]f any candidate shall request the recount of the ballots cast in all or in only specified voting areas for the office for which the person is a candidate, or if any registered elector who cast a ballot in a question

submitted election requests a recount in all or only specified voting areas to determine the result of the election, the county board of canvassers shall cause a special election board appointed by the county election officer to meet under the supervision of the county election officer and recount the ballots with respect to any office or question submitted specified by the county board of canvassers or requested by the candidate or elector.

The statute goes on to provide that “[i]f a recount is required in a county that uses optical scanning systems . . . or electronic or electromechanical voting systems . . . the method of conducting the recount shall be at the discretion of the person requesting the recount.”<sup>1</sup>

K.S.A. 25-3107(c)(2) applies to elections occurring in more than one county and entitles candidates or registered electors who cast a ballot in an election for a constitutional amendment to request a recount.<sup>2</sup> Like K.S.A. 25-3107(b), it also provides that “[i]f a recount is required in a county that uses optical scanning equipment . . . or electronic or electromechanical voting systems . . . the method of conducting the recount shall be at the discretion of the person requesting the recount.”<sup>3</sup>

We also note K.S.A. 25-2912(a)(3) specifies that “[e]ach paper ballot shall be counted by hand in any recount conducted with respect to any election, unless the requestor of a recount pursuant to K.S.A. 25-3107, and amendments thereto, elects not to have the ballots counted by hand.”

Statutory interpretation begins with plain language of the statute, giving common words their ordinary meaning.<sup>4</sup> If that text is plain and unambiguous, courts “do not speculate about the legislative intent behind that clear text.”<sup>5</sup> Here, we find the plain language of these statutes to be clear.

The default recount method is a hand count of paper ballots. The text of the statute is unambiguous. “Each paper ballot shall be counted by hand”<sup>6</sup> plainly refers to the original paper ballot itself, not to a digital or photographic image of the ballot. And if a recount requestor asks for a hand count of the original paper ballots, the recount must be conducted in that manner, without the substitution of ballot

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<sup>1</sup> K.S.A. 25-3107(b).

<sup>2</sup> Before July 1, 2023, the text of the statute did not cover recounts of elections on constitutional amendments. It was amended during the 2023 legislative session to include those elections. *See* L. 2023, ch. 79, § 50.

<sup>3</sup> K.S.A. 25-3107(c)(2).

<sup>4</sup> *See, e.g., In re River Rock Energy Co.*, 313 Kan. 936, 944, 492 P.3d 1157 (2021).

<sup>5</sup> *Id.*

<sup>6</sup> K.S.A. 25-2912(a)(3).

images. Again, the statutory text is clear. The method of recounting is “at the discretion of the person requesting the recount.”<sup>7</sup>

In summary, a county conducting a recount may not substitute ballot images for the original paper ballots, unless the person requesting the recount specifically requests such substitution in a county that uses optical scanning equipment or electronic or electromechanical voting systems.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach  
Kansas Attorney General

/s/ Dwight R. Carswell

Dwight R. Carswell  
Deputy Solicitor General

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<sup>7</sup> K.S.A. 25-3107(b), (c)(2).