

MINUTES OF THE
SANTA FE COUNTY
BOARD OF REGISTRATION

March 4, 2015

This meeting of the Santa Fe County Board of Registration commenced at approximately 9:15 a.m. in the Legal Conference Room, County Administration Building, 102 Grant Street, Santa Fe, New Mexico.

A quorum was achieved with the following Board members present:

Members Present:

Donna Connelly
Clifford M. Rees
Samuel LeDoux

Member(s) Absent:

None

Others Present:

Geraldine Salazar, County Clerk
Eric Barraza, Acting Deputy Chief Bureau of Elections
Bruce Frederick, Assistant County Attorney
Theresa Atencio, Elections Administration Supervisor
Celeste Sanchez, Voter Information Specialist

Clerk Salazar administered the oath of office to the three Board members. The certificate of the oath of office was signed and copies provided to the Board members.

Mr. Rees said he had procedural questions and asked if the Board elects a chair. Eric Barraza, Acting Deputy Chief Bureau of Elections, said it in the past they have and it was appropriate to elect one.

Nominations were opened for Chair and Mr. Rees nominated himself and Ms. Connelly seconded. There were no other nominations.

Clifford Rees was elected Chair by a majority [2-1] voice vote with Mr. LeDoux voting against.

In regard to procedural issues, Chair Rees asked whether the Board was considered a policy-making body subject to the Open Meetings Act and if the agenda had been properly noticed. Mr. LeDoux said he saw the posted agenda last week.

Ms. Atencio said the agenda was posted on the County Clerk's website.

Chair Rees said he observed what appeared to be an error in the legal authorization as

provided by the Secretary of State (SOS) in the citation of Regulation 1.10.35 NMAC. The guidelines lack a date and identification indicating what office generated them.

Mr. Barraza said the purge report is over 450 pages and he offered to provide it in a PDF electronic copy. A search of the list can be conducted electronically.

Chair Rees requested an overview of the process leading to the generation of a 14,000+ entry purge report. Mr. Barraza said in 2007 and 2009 purges were not conducted due to a procedural issue at the SOS Office. The SOS has performed list maintenance that is compared to the National Change of Address (NCOA) from the United States Postal Service. The SOS compares the voter files with the NCOA and any New Mexican who had an address change is mailed a Verification of Address form.

Chair Rees thanked Assistant County Attorney Bruce Frederick for attending and anticipated the Board would develop a list of questions that Mr. Frederick could research and address at the next meeting.

Returning to the issue of the error in a legal citation that was generated from SOS, page 2 states, "...under NMAC 1.10.35, an inactive voter is defined as..." and cites the US Code 42 USC 1993 gg6(d). Instead that should be 42 USC 1973 gg-6(d). That citation also appears in the SOS Administrative Rule, the Voters Record System Rule 1.10.35.7 P. NMAC, specifically in the definitions section of Inactive Voter, and it uses the USC 1993 which appears to be an error. Chair Rees said he wanted to confirm that it was an error and that the Board was reviewing and taking action with the appropriate legal authorities.

Chair Rees pointed out that the Board was working off legal authorities that start from the Federal National Voter Registration Act and are carried out by the SOS and the county clerk offices.

Mr. Barraza confirmed that when he speaks of a list, it is strictly Santa Fe County's list.

Continuing with the process, Mr. Barraza said the SOS compares the NCOA to the voter file and generates notices from the results. The SOS sends out notices every two years and the voters have what he recalled was 90 days to respond. Notices were sent by SOS August 1, 2012. Prior to that notices were sent in 2007 but there was a problem in that the notices were not forwardable which invalidated that list maintenance/purge. In 2009, the SOS did not generate any list.

Mr. LeDoux noted that the guidelines allow for the mailing of confirmation notices to occur between 90 and 120 days before a general election.

Mr. Barraza said the NCOA is compared to the SOS master voter file.

Chair Rees said he wanted a sense of the statistical validity of the overall voter registration with those that appear on purge report and requested a breakdown of the Santa Fe County voters by political party registration status as well as a breakdown of those on the current purge list.

Chair Rees noted other grounds for voter disqualification listed in 1-4-24 of the Election Code: death of the voter, legal insanity of the voter, a felony conviction, at the request of the voter or at the direction of the Board of Registration. He mentioned people who have renounced their citizenship are also disqualified from voting and asked whether those who are disqualified are included in the current list before the Board. Mr. Barraza responded no, in the cases of 1-4-24, those voters are removed upon notification.

Ms. Atencio said if a felon tries to register, the system will flag that person as non-eligible. The SOS sends the County a monthly list from the courts identifying convicted felons. District court judgments and sentences are available but not those from federal court. In terms of rehabilitation (pardons, etc.) the individual can send in a certificate of completion of parole and the SOS sends those to the counties upon receipt.

Ms. Atencio said the County sends a letter to different jurisdictions advising that a voter has registered in Santa Fe County from their county.

Chair Rees said it would be helpful to better understand the SOS database and the input received to generate what he hopes is the most up-to-date list of qualified voters for Santa Fe County. Mr. Barraza said it was his belief it was as accurate as possible based on available information.

Mr. Barraza said if an NCOA card is sent and the individual does not respond he or she would be entered on the purge list. If they do respond, the County has authority to remove them from the purge list.

Mr. LeDoux said in his review of the proposed purge list a good many of the names were affiliated with the New Mexico Independent Party (IND), a disqualified party. He asked whether the party's loss of status resulted in the voter losing registration. Mr. Barraza said the people on the list were sent the NCOA confirmation card regardless of party affiliation. He said with any recent recorded voter activity, August 2, 2013, the individual will not be on the list.

Mr. Barraza said a confirmation card can be returned with an address change, residing at same residence or deceased. That information is entered into the system.

Chair Rees asked whether the confirmation card is sent with a return-receipt to verify the voter received the card. Mr. Barraza said it was not but the card is forwardable. While not able to speak for the SOS, Mr. Barraza said he understood forwardability satisfied the federal law and is sufficient to make determinations.

For the record, the Chair said he has been involved in aspects of the election process as a residing precinct judge and a voter registrar.

Mr. LeDoux asked how rural addresses were handled mentioning that the Pojoaque Post Office shut down. Mr. Barraza said if the card is returned undeliverable the individual will be on the purge list. However, if they were an active voter they would not be on the list. The post office continues to deliver to rural addresses. The Bureau works with the County's GIS department in an attempt to track rural route voter addresses.

Mr. Barraza reiterated purges were not accomplished during 2007 and 2009. Many individuals received a confirmation card in 2007; however, that card was deemed invalid because it was not forwardable per federal requirements. That means there are individuals who have received two notices.

Clerk Salazar said because of the bloated list it is important to conduct the list "maintenance process," which is the appropriate term rather than "purge." The Department of Justice is looking at the State of New Mexico because there has not been maintenance since 2007 as required by federal law.

Mr. Barraza said it takes approximately four years to generate a list in compliance with the federal law.

Opinions of United State Postal Services' reliability aside, Chair Rees said a citizen's right to vote is sacred and taking someone off the list due to a failure of the USPS is a serious issue. He said he was particularly troubled by the scenario of qualified voters appearing at the election poll to find out they have purged by the Board of Registration in 2015.

Clerk Salazar said once the list maintenance is accomplished the Clerk's Office will send out press releases informing the public of how they can confirm their status.

Recognizing nothing is 100 percent, Clerk Salazar asked staff to explain how an individual is reinstated on the list if erroneously removed. She said the database is enormous and the County has to rely on the SOS. The County has an active role in maintaining the list. The Bureau takes their work very seriously and works to perfect the list.

Mr. Barraza recalled in the past a card was sent advising the individual his or her voting status was changed. A signature roster is maintained by the County for 10 years. If someone voted in the last general election they will not be on this list. He acknowledged there was the possibility of human error. By checking signature rosters errors can be corrected.

Mr. LeDoux asked whether the County could publish the entire list on the County's website and advise registered voters to scan it for their name.

Mr. Barraza confirmed that the SOS receives the undeliverables and forwards that information to the County who is responsible for updating the database. Ms. Connolly asked whether the cards are sent to the County in batches or individually from the SOS and how they are tracked/logged. Ms. Atencio said when she worked for the SOS the returned NCOAs were recorded on a separate database before being forwarded to the appropriate county.

Mr. Barraza reviewed and confirmed that the return card is addressed to the SOS.

Ms. Connolly said she was concerned that a confirmation card may not make it from the SOS to the appropriate county, then to the database.

Mr. Barraza said the database tracks dates of changes to entries. He commented that citizens do walk into the Clerk's office and change their address. When the County sends out mailings to voters and they are returned as undeliverable, that voter is not designated "inactive" but according to the NVRA (National Voter Registration Act) process they are included in the next NCOA mailing. A signed letter from the voter indicating a desire to be removed or that they have moved is sufficient for the County to remove his or her name. A phone call is not sufficient

proof, added Mr. LeDoux and Mr. Barraza confirmed.

A discussion regarding provisional voting occurred.

[The Board recessed for 15 minutes]

Chair Rees said he understood this Board was legally required to meet before March 15th but not required to take final action on the voter maintenance list. Mr. Frederick said without researching the issue at this point that was his tentative understanding. He noted that 42 USC 1973 gg-6(d) has been reassigned to 52 USC Section 2507 and at this point he was unable to locate a definition of inactive voter.

Chair Rees asked whether the definition changed and Mr. Frederick opined that there may not be a federal definition of inactive voter. Inactive voter is defined in state regulation as a voter who has been mailed a confirmation card in accordance with 42 USC 1994 gg6(d) and who has either failed to respond or has failed to vote in any election conducted after the mailing of the confirmation card.

The notion of meeting following the legislative session during the week of March 23rd was discussed.

Stating he was willing to wait, Mr. LeDoux suggested the SOS be contacted to ascertain whether there is an emergency to conduct the maintenance. Chair Rees agreed and asked that staff determine whether there is a legal mandate that the purge is conducted before March 15th.

Clerk Salazar advised the Board that her office will publish a press release informing the public of the issue of inactive voters and the process that is underway. In the event there is a voter that has been removed, they will have every opportunity to contact the Clerk's Office. The Bureau of Elections holds their records beyond the legal requirements and will continue that practice. The Clerk's Office believes the right to vote is a precious right and works to protect it.

Clerk Salazar said an individual can access the SOS's voter registration database on line and the County will provide that link. If the County is unable to post the list, the public will be advised of other methods to confirm their voter registration status.

Mr. LeDoux introduced a motion to direct the County Clerk's office to move forward with a press release; provide the public a method to determine their voter registration status; and, that staff post what is technologically and legally possible of public information to give notice of the names on the maintenance list to be purged. Ms. Connelly seconded and the motion passed by unanimous [3-0] voice vote.

Mr. Barraza provided the following information regarding voters and Mr. LeDoux provided the estimated percentage:

| <u>Party</u> | <u>#registered</u> | <u># for removal</u> | <u>Approximate % to be purged</u> |
|----------------------------|--------------------|----------------------|-----------------------------------|
| Constitution Party | n/a | 01 | |
| Democrat | 63,066 | 8,112 | 12% |
| DTS – Decline to State | 21,039 | 3,936 | 18% |
| Green | n/a | 300 | |
| Independent | n/a | 88 | |
| Libertarian | n/a | 52 | |
| Other Party – unregistered | n/a | 03 | |
| Republican | 16,592 | 2,372 | 14% |
| NM Socialist | n/a | 02 | |
| [total n/a Not Available] | 1,850 | | |
| TOTAL | 102,547 | 14,866 | |

Chair Rees suggested discussing how best to sample the maintenance list so the Board has a satisfaction level that the decisions made are the best legally and statistically.

Clerk Salazar said in a previous conversation with Mr. LeDoux he advised her that he compared the Clerk-provided list with the party list and found it to be consistent. She suggested the Democrat representative may want to conduct the same sampling.

Observing that the Board was viewing PPI (protected personal information), Clerk Salazar reminded them that they took an oath of office.

Upon Ms. Connelly's request staff provided a returned 2014 confirmation card for examination. Ms. Connelly requested that staff provide the actual mailing that the voter received along with the confirmation card.

Staff was requested to contact the Secretary of State to:

- Determine when and who drafted the guidelines and whether it was reviewed by SOS's legal counsel
- Advise of the discrepancy in the federal citation and request a complete citation
- Obtain assurance that the Santa Fe County Board of Registration is working with the current guidelines; guidelines as provided are neither dated nor identifiable as to where they were generated
- Determine whether all removals through the Board's process must be initiated by the SOS

Clerk Salazar directed Mr. Barraza to prepare correspondence for the Secretary of State's office with legal review by Mr. Frederick. Chair Rees requested that the Board members be copied public documents sent to the SOS. Mr. Frederick said the members could be emailed the correspondence and added that he may phone the SOS to ascertain the desired information.

Other questions that required clarification include:

- Whether there is a legal urgency to meet before March 23rd

- Whether the County can post the maintenance list on the Clerk's website and what would be redacted
- Determine the best route for the voter to view information in the most secure and accurate format – SOS website

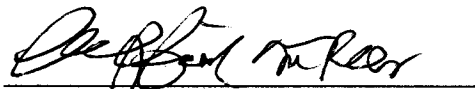
Mr. Frederick said he understands the Board's desire for assurance that the process required by the Federal Voter Act is being followed. The FVA requires forwardable mail and thus that is sufficient proof. He offered that he would review the law(s) more thoroughly in preparation for the next meeting.

Questions continued to surface regarding the process following the mailing to the registered voter: where were the copies of undeliverables and how do counties receive the information from the SOS?

There was consensus to cancel the meeting scheduled for March 6, 2015 at 9.a.m and recess this meeting. Monday, March 23, 2015 was tentatively selected for the next meeting date and time.

Upon motion by Mr. LeDoux and second by Ms. Connelly, the Board of Registration recessed at 11:35 am.

Approved by:



Clifford Rees, Chair
Board of Registration


ATTEST TO:



GERALDINE SALAZAR
COUNTY CLERK

3-17-2015

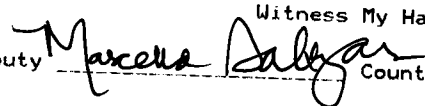


Respectfully submitted,

Karen Farrell, Wordswork
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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss BOARD OF REGISTRATION
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I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of March, 2015 at 08:42:05 AM
And Was Duly Recorded as Instrument # 1760004
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Deputy  Geraldine Salazar
County Clerk, Santa Fe, NM