



August 9, 2018

Secretary of State Kris Kobach
120 SW 10th Avenue
Topeka, KS 66612

Dear Secretary Kobach:

It has come to my attention that your office is giving advice to county election officials – as recently as a conference call yesterday -- and you are making public statements on national television which are inconsistent with Kansas law and may serve to suppress the vote in the ongoing Kansas primary election process. Accordingly, I hereby request that you recuse yourself from rendering further advice in these matters and that you designate the Attorney General of Kansas to provide this function.

In particular, I am informed as follows:

- **Mailed Ballots.** County election offices continue to receive new mailed ballots. Pursuant to Kansas law, ballots mailed by August 7 and received by August 10 must be counted. K.S.A. 25-1132. It has been reported to me that you are advising county election officers not to count mailed ballots with no postmark or unreadable postmarks, and that your office is informing the public on national television that all mail ballots are already received. Clearly, new mail ballots are allowed through Friday, August 10. Furthermore, the statute allows ballots “otherwise indicated by the U.S. postal service to have been mailed on or before the close of the polls.” Any mailed ballot received, for instance, on August 8 and 9, in the vast majority of Kansas counties that have two-day local mail delivery, obviously was mailed by the close of polls on Tuesday and must be counted.
- **Provisional Ballots.** I am informed that many unaffiliated voters sought to vote with a Republican ballot in the primary, as permitted by law. K.S.A. 25-3304. Many of these voters, including a member of my staff, were instructed to vote by provisional ballot at the polling site. These voters were not provided with voter registration paperwork as is

required of the election officer by law, and were advised that submitting a provisional ballot would ensure their vote counted in the primary. As a consequence, such provisional ballots cast in the primary election must be construed as evidence of voter intent and must be counted.

I believe that the designation of the Attorney General as a neutral party to advise county election officials on these matters will help ensure the confidence of the voting public in the outcome of the primary election. Inasmuch as you are a licensed attorney, I also want you to be comfortable that your role is consistent with Kansas Rule of Professional Responsibility 1.7(a)(2), which prohibits an attorney from giving advice in a matter in which they are personally interested.

Finally, the circumstances of this election obviously increase the likelihood that one of the candidates may seek a recount, or even the possibility of litigation. In either event, it is crucial that all voting materials, including ballots, advance ballot applications, advance ballot envelopes, communications among election officials, and all other related documents, be preserved indefinitely. See also K.S.A. 25-2708 (preservation of election materials).

I must ask for your response to this request no later than 9:00 a.m. on Friday, August 10, 2018. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Colyer", written over a light blue horizontal line.

Jeff Colyer, M.D.
Governor of Kansas

cc: All Kansas County Election Officials
Attorney General Derek Schmidt