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May 24, 2002

Honorable Michael W. Armistead
Probate Judge, Choctaw County
117 South Mulberry
Butler, AL 36904

Elections – Vote-Counting Machines –
Ballots – Choctaw County

A central vote-counting location is open to the general public for observation of the vote-counting process. The general public is not allowed access to the returning officers, the ballot boxes, or the vote-counting machine. The sheriff has the authority to be present in the central vote-counting location to preserve order during the counting of the votes.

Dear Judge Armistead:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Is the central vote-counting location open to the public?
2. What, if any, are the restrictions on public access to the returning officers and the box of ballots they bring to the central vote-counting location?
3. What, if any, are the restrictions on public access to the electronic vote-counting machine and ballots during the counting process?

4. Is a two-to-three foot tall bar a sufficient barrier between the electronic vote-counting machine and the public?

FACTS AND ANALYSIS

Your request states that Choctaw County currently uses paper ballots. These ballots are collected at each polling place once the polls are closed, and returning officers transport the ballots to the central voting location, the Choctaw County Courthouse, where the ballots are counted using an electronic vote-counting machine. The counting of the ballots is conducted in the main courtroom of the courthouse. The general public is allowed to witness the counting of the ballots and is present in the same room as the ballots and the electronic vote-counting machine.

The returning officer and the ballots from each polling place are seated on the right side of the courtroom waiting for their box to be called in order for their ballots to be counted. There is no barrier present that keeps the general public from gaining access to the returning officer or the ballots they possess. The electronic vote-counting machine is located in the front of the courtroom where the plaintiff and the defendant tables are located. These tables are directly in front of the judge's bench. When called, the returning officer brings the ballots from his box to the front in order for those votes to be counted. The only barrier between the general public and the electronic vote-counting machine and the exposed ballots is the approximately two-to-three foot tall bar that spans the width of the courtroom.

Electronic vote-counting systems are authorized pursuant to section 17-24-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 17-24-1 to 17-24-11 (1995). Electronic vote counters, called precinct counters, may be used at each polling place, or a central ballot counter may be used at a central location in the county, usually the courthouse. When precinct counters are used, each ballot is counted by a machine located at the polling place. When a central ballot counter is used, the ballots from each polling place are placed in a sealed box, transported to a central location, and counted on a central vote-counting machine by the poll workers at that central location. When electronic vote-counting systems are used, the procedures for voting paper ballots and the procedures for voting machines apply as far as practicable, and the electronic vote-counting committee is authorized to adopt other procedures necessary for implementing the use of electronic vote-counting systems. ALA. CODE § 17-24-7 (1995). Rule 307-X-1-.17 of the "Procedures for Electronic Vote Counting Systems" establishes the procedure for the counting of votes when electronic counters are used, including the use of central ballot counters. In addition, with respect to primary elections, the Code of Alabama provides that the ballots are to be counted in the same

manner as ballots are counted in the general election. ALA. CODE § 17-16-31 (1995).

Section 17-9-33 sets forth the procedure for counting ballots or votes at the close of the election when voting machines are used. This section states that the counting of votes shall be conducted in the presence of the poll watchers and at least one representative of any newspaper or press association that wishes to be present. ALA. CODE § 17-9-33 (1995). Poll watchers are also specifically authorized to be present at the counting of the votes for primary and general elections. ALA. CODE § 17-16-26 & § 17-6-8 (1995). Section 17-7-18 of the Code of Alabama provides that only electors who are voting, persons who are assisting them, the sheriff and his deputies, the poll workers, returning officers, and poll watchers are allowed within 30 feet of a polling place. ALA. CODE § 17-7-18 (1995). This provision prohibits all persons not listed in the statute from entering a polling place or coming within 30 feet of a polling place. Opinion to Honorable Patricia Yeager Fuhrmeister, Shelby County Probate Judge, dated May 31, 2000, A.G. No. 2000-160. There is no exception in this provision for the period of time when the votes are being counted at the polling place. Thus, when the votes are counted at the polling places, public access is restricted.

With respect to central vote-counting locations, there are no provisions in the Code or in the "Procedures for Electronic Vote Counting Systems" that prohibit the general public from observing or being present when the votes are counted.

The Code of Alabama provides that the sheriff of the county or the person discharging the duties of the sheriff serves as the returning officer for the primary and general elections. ALA. CODE § 17-6-11 & § 17-16-30 (1995). The "Procedures for Electronic Vote Counting Systems" provide that the inspector and at least one other poll official shall deliver the sealed and unopened ballot box to the central count location for processing and counting by the poll officials. "Procedures for Electronic Vote Counting Systems" R. 307-X-1-.19 (2) (amended Feb. 7, 2002). Neither the Code nor the Procedures authorize public access to the returning officers, the electronic vote-counting machine, the ballots, or the ballot boxes delivered to the central vote-counting location.

Based upon the above provisions, it is the opinion of this Office that a central vote-counting location is open to the general public. This Office has been informed that the practice of allowing the general public to witness the counting of the votes at the central vote-counting location has been in existence in Choctaw County and other counties using central vote counters for many years.

Your request states that the general public in Choctaw County is allowed in the bench area of the courtroom behind a two-to-three foot tall bar. You question whether this arrangement provides a sufficient barrier to the vote-counting machine and the ballots. Section 17-1-2 of the Code of Alabama provides that the sheriff shall be present in person or by deputy at all election precincts to preserve order and to ensure that every voter may vote without interference or interruption. ALA. CODE § 17-1-2 (1995). If there should be any problems, the sheriff and/or his deputies are authorized to preserve order in the courtroom where the ballots are counted. Accordingly, the sheriff should determine whether the vote-counting machine and the ballots are secure under these circumstances. In providing security, the sheriff might consider: (1) allowing the returning officers to deliver the ballot boxes through another door of the courtroom or the courthouse that would separate them from the general public; (2) allowing the poll watchers and the media a separate area or space closer to the vote-counting machine to view the counting of the votes, given their specific authority to observe the counting of the ballots; and (3) posting deputies in the courtroom to prevent persons from crossing the barrier.

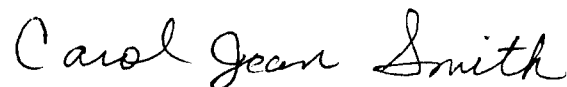
CONCLUSION

A central vote-counting location is open to the general public for observation of the vote-counting process. The general public is not allowed access to the returning officers, the ballot boxes or the vote-counting machine. The sheriff has the authority to be present in the central vote-counting location to preserve order during the counting of the votes.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division