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TO: Park County Board of County Commissioners
FROM: Bryan A. Skoric, Park County and Prosecuting Attorney

Re: Opinion on manual ballot tabulation

When requested by any county officer, a county attorney shall provide a legal opinion in writing upon all questions of law related to the duties of such officer. *Wyo. Stat. § 18-3-302 (a) (ii)*.

The Park County Board of County Commissioners has requested a legal opinion on the legality regarding a group's proposal to initiate a "hand-count" of ballots within Park County during the 2022 election process. To that end, the Park County Attorney's Office researched whether the Park County Commissioners, the Park County Clerk, or Park County in general, may legally authorize manual tabulation of official voter ballots by them or anyone else.

Pursuant to Wyoming law, Park County, like all other counties, is mandated to utilize ballots that have been designed to be tabulated via counting machine and voting equipment. *Wyo. Stat. § 22-14-114* reads in part:

(a) For ballots designed to be counted by machine, each individual vote **shall be determined by the voting equipment and shall not be determined subjectively by human tabulation** except when the intent of the voter is unmistakable but the ballot was received in such damaged, soiled, or other condition that it is rejected by the machine.

At present, and throughout Wyoming, all ballots are designed to be counted by machine, thereby invoking this statute. This statute defines the law and the law simply cannot be ignored by local officials.

Voting procedures in the State of Wyoming are set by the Wyoming Legislature, not local officials. 193 pages of Wyoming statutes are dedicated solely to election type activity to ensure uniformity. The State has unified voting procedures for a reason. The Legislature clearly understands that if all 23 counties had their own voting and tabulation procedures, uniformity would be lost and voter skepticism would surely ensue. Manual tabulation of ballots could also elicit the natural subjectivity of persons counting the ballots, the very thing the Legislature intended to eliminate by the enactment of *Wyo. Stat. § 22-14-114*.

Furthermore, Article 6, Section 11 of the Wyoming Constitution states that all voters shall be guaranteed absolute privacy in the preparation of their ballots and the secrecy of the ballot shall be made compulsory. Handing ballots over to any individual or group outside of existing election laws would violate this constitutional provision.

Wyo. Stat. § 22-14-107 also mandates that unofficial voting tabulations **shall be transmitted** immediately to the Secretary of State. Expanding upon this statute, Chapter 15, Section 4 (b) of the Secretary of State's administrative rules on Election Procedures states that results **shall be submitted** to the Secretary of State no later than 10:30 p.m. on election night. Voting machines allow timely tabulation, whereas hand counting could take days. Waiting for a hand count result would not be in conformity with either this statute or this rule.

Federal law also mandates ballots and other records related to elections be kept by the Park County Clerk in a preserved manner for 22 months following an election. *52 USC § 20701*. Failure to do so is punishable as a high misdemeanor. Given this preservation law, and absent a court order, Park County cannot turn over ballots to any individual or group of people to be counted manually.

It is the responsibility of the Wyoming Legislature and the Wyoming Secretary of State to create laws and rules that promote and maintain uniform voting, vote counting procedures and orderly voting. As such, it is not in the discretion of any Park County official to alter or deviate from these Wyoming statutes or officially enacted rules.

Upon mandated recognition, deference and adherence to established Wyoming law, the Park County Commissioners, the Park County Clerk and Park County in general, are prohibited from engaging in or allowing hand-counting or manual tabulation of its election ballots, since they are statutorily mandated to be tabulated via machine pursuant to statute. A willful violation of Wyoming's Election Code by any official subjects them to a possible felony conviction as well as removal from office. *Wyo. Stat. § 22-26-119.*

Unless or until such time as the law changes, any group or individual concerned with election integrity should volunteer as an election judge. They should also attend the pre-election testing of the voting equipment which is open to the public. In addition, it is anticipated that this year, post-election audits of the equipment will be performed statewide under the authority of the Secretary of State.

In conclusion, the current voting and counting procedures for Park County, like all other counties, must remain unaltered and Park County is prohibited from engaging in or allowing a hand-count/ manual tabulation of ballots until such time that the County is directed to do so or allowed to do so by either the Wyoming Legislature or the Wyoming Secretary of State. The law simply precludes it.

As indicated previously, county attorneys are charged with giving legal opinions, which are not always popular opinions.

Sincerely,



Bryan A. Skoric
Park County and Prosecuting Attorney