



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

June 15, 2022

Via Electronic Mail Only

Honorable Hector Balderas, Attorney General
New Mexico Attorney General Office
Email: hbalderas@nmag.org

Re: Potential Criminal and Civil Violations of the Election Code and Governmental Conduct Act by the Otero County Commission

Honorable Hector Balderas:

The SOS is referring a criminal matter for investigation related to multiple unlawful actions by the Otero County Commission in June of 2022, that directly implicate criminal violations of the Election Code and the Governmental Conduct Act. The specific criminal and civil violations are found in NMSA 1978, Section 1-20-23 and NMSA 1978, Section 10-16-3. The specific actions stem from the Otero County Commission meetings held on June 9, 2022, and June 13, 2022. Specifically, the Commission continually refuses to comply with their mandatory duty under the Election Code in certifying the election returns and otherwise comply with the election code. Specifically, the Otero County Commission voted to hand count the election returns, to remove the secure containers mandated by the legislature to be in use for voters to return mailed ballots, and to discontinued use of the state certified voting systems or tabulators. All these actions are not permitted or are unlawful pursuant to the explicit terms of the election code. Additionally, on June 13, the Otero County Commission unlawfully voted to not certify the election results. Certification is necessary to issue certificates of nomination and declare the official results of the 2022 Primary Election. Therefore, all these violations of laws implicate the criminal and civil penalties in the Election Code and the Governmental Conduct Act.

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June 9, 2022, Commission Meeting Action

The Otero County Commission met on June 9, 2022. Relevant to this referral, they met to discuss several election related issues. They are noted as point 22, 23, 24 of the agenda attached as **Exhibit 1**. There are no meeting minutes from this meeting yet but there is a YouTube video of the meeting.

¹ At the 7:07:08 mark of the link the Otero County attorney advises the Otero County Commission that: 1) the hand count of the election returns is not provided in the election code; that 2) the county would be responsible for paying for any recount, that 3) the use of secured containers are mandatory; and that 4) the County has to use the voting systems for the elections. The County Commission still voted to 1) approve a hand counting all ballots; 2) remove all election ballot drop boxes [secured containers] from the public square; and 3) discontinue the use of Dominion Voting Machines before the 2022 General Election. All these votes seem to be in violation of the legal advice given by their attorney and our position they violated the election code.

Specifically, election recounts are not available under Article 13 before certification of election results pursuant to NMSA 1978, Section 1-13-13. They are allowed under Article 14 after certification. The statutory framework of the election code makes clear that election administrators and county canvassing boards must follow the election code, and do not have the power to change its mandatory provisions. *State of N.M. ex rel. League of Woman Voters v. Herrera*, 2009-NMSC-003, ¶ 12, 145 N.M. 563, 203 P.3d 94.

In addition, the use of secured containers is mandatory and not discretionary upon the County pursuant to NMSA 1978, Section 1-6-9, as articulated in the AG Opinion issued on this matter on June 2, 2022. Attached as **Exhibit 2**. As such, removing them would be unlawful.

In addition, only voting systems approved by the state may be used pursuant to any election in the election code. *See Voting Machines Act 1-9-1 to -22*. Discontinuing their use or using their own voting systems that are not approved and certified by the State is not allowable under the election code.

¹ [Otero County Special Meeting June 9, 2022 - YouTube](#)



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Therefore, the actions taken by the Commission on June 9 violated the express language of the election code. We believe they were told that such action violated the express language of the election code, but they still voted to approve those measures. NMSA 1978 Section 1-20-23 states:

Violation of the Election Code [Chapter 1 NMSA 1978] by officers consists of the willful [willful] violation of the Election Code by any state or county officer or by any deputy or assistant thereto, or the willful [willful] failure or refusal of any such person to perform any act or duty required of him by the Election Code.

Any officer, deputy or assistant who commits such willful [willful] violation of the Election Code is guilty of a fourth degree felony and, in addition, violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law.

We request an investigation into whether these matters are a violation of 1-20-23 and Section 10-16-3 of the General Conduct Act or any other violation of law.

June 13, 2022, Commission Meeting Action

The Otero County Commission presumably in their position as County Canvassing Board met on June 13, 2022. Relevant to this referral they met to discuss certification of the election results. The agenda is attached at **Exhibit 3**. There are no meeting minutes from this meeting but there is a YouTube video of the meeting.² Importantly, the commission voted to not certify the election in contravention of the Otero County Clerk's recommendation to approve, as she identified no deficiencies in the election returns. The SOS believes that this action was unlawful and filed a Writ of Mandamus in the Supreme Court to command this action. *See* S-1-SC-39426. On June 15, 2022, the Supreme Court granted the Writ Compelling Certification. Attached as **Exhibit 4**. The basis for voting to not certify the election was because they "harbor doubt regarding the accuracy of the state mandated election tabulators and believe that a hand recount is necessary to ensure an accurate vote tally." Although they were counseled on the proper way to certify the election, they still took the vote against certification based on these beliefs, and not a discrepancy in the election returns themselves.

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² [Otero County Special Meeting June 13, 2022 - YouTube](#)



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We request an investigation into whether this vote, not based in law is a violation of 1-20-23 and Section 10-16-3 of the General Conduct Act or any other violation of law.

Conclusion

Our office believes that the specific votes of the Otero County Commission identified above implicate civil and criminal violations of law. As such, we respectfully request a prompt investigation into whether such violations occurred. Although we try to outline some of the issues identified by our office, this in no way should limit your office's review of any further violation of law implicated by these actions. If you need anything further from our office, please do not hesitate to contact us.

Respectfully,

A handwritten signature in cursive script that reads "Maggie Toulouse Oliver".

Maggie Toulouse Oliver
New Mexico Secretary of State

Encl: Exhibits 1-4