

Review Polling Places for ADA Compliance

All polling places used to conduct official elections in the United States must be fully accessible for voters with disabilities the same as other public facilities. This has been true since the passage of the Americans with Disabilities Act, but the Help America Vote Act of 2002 focused more attention on polling places and added specific requirements regarding accessibility of ballots. Also, the federal government provided grants funding to assist states and localities in achieving full accessibility.

As part of the efforts to implement HAVA, in 2004-2006 the secretary of state's office coordinated with county election officers in a major push to review all polling places and remedy any accessibility deficiencies that existed. CEOs were instructed to use the ADA Checklist for Polling Places, distributed by the U.S. Department of Justice, to determine the status of accessibility at each polling place. Local representatives of Kansas-based disability rights advocacy groups were invited to work with CEOs to visit polling places and help identify deficiencies.



The Americans with Disabilities Act and the Help America Vote Act require polling places to be accessible for all voters.
Photo courtesy of www.ada.gov.

Grant funding provided by Congress through HAVA was used to purchase many products used to make temporary adaptations to polling places for election day, including ramps, door handles, doorbells, parking space traffic cones, signage and voting booths.

Whenever a CEO moves or changes a polling place, the checklist must be used to survey the site to make sure it is accessible for the next election. The checklist is available on the U.S. Department of Justice's web site at

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From the desk of the Secretary



On April 16 Governor Sam Brownback signed HB 2164 and SB 122, two important election laws that have impact both before and after election day. Both laws become effective July 1.

Prior to voting in Kansas a person must be on the voter registration list. The process of registering to vote has always included, among other things, a signed statement that the applicant is a citizen of the United States. Any person who was not a citizen but was willing to make that statement was deemed to meet the citizenship requirement and therefore was added to the voter rolls. Once registered, it is extremely difficult to identify noncitizen voters. As you know, beginning this year the Secure and Fair Elections law requires proof of citizenship to register to vote.

House Bill 2164 is a valuable tool that enlists the help of the judicial branch in identifying aliens who are on Kansas voter rolls. It provides that a jury commissioner must submit to the secretary of state information about a prospective juror who is disqualified from serving on a jury because he or she is not a U.S. citizen. This is an important step in maintaining voter registration lists. Every time an alien, legal or illegal, votes in a Kansas election, that vote cancels out the vote of a U.S. citizen. Now we will be able to identify some noncitizens who have registered to vote and remove them from the voter rolls.

Voter privacy after election day is enhanced too. After the polls close, candidates or other interested parties sometimes request a list of voters who were issued provisional ballots. How those requests were handled has varied from one county election officer to another, and even from one judge to another.

Under Senate Bill 122 (formerly SB 177), disclosing the name of any voter who has cast a ballot (other than an advanced ballot) is prohibited from the time the ballot is cast until the final canvass of the election, except as ordered by a court in an election contest. The confidentiality of the ballot and the privacy of the voting process are fundamental aspects of our electoral system. This law will protect the integrity of the system and ensure that voters are not harassed or questioned about their ballots after election day is over.

I enjoyed being with you all in the “Little Apple” last month. Congratulations to the incoming KCCEOA officers: President Sharon Seibel (Ford County), Vice President Jamie Shew (Douglas County), Secretary Sharon Wolters (Smith County) and Treasurer Robert Wyatt (Norton County). Your service is appreciated.

A handwritten signature in black ink that reads "Kris W. Kobach". The signature is written in a cursive, flowing style.

Two Election Bills Pass Legislature

There were dozens of bills related to elections, ethics and campaign finance that were considered during the 2013 session of the Kansas Legislature. Only two bills passed before first adjournment in early April, and at that time it was thought that more bills might be considered when the Legislature returned on May 8 for its wrapup session. As it turned out, that did not happen.

The office of the secretary of state coordinates with the KCCEOA elections committee and its chairman, Crawford County Clerk Don Pyle, to monitor bills, prepare testimony and keep the KCCEOA membership informed.

The SOS office reported on legislation during its presentation at the KCCEOA spring conference in Manhattan on May 8 and distributed a brief summary of legislative activity. During that session, SOS staff reported that no concurrent resolutions had passed to create statewide votes on constitutional amendments. Another major issue currently under consideration is the possibility of moving the local elections held in the spring of odd-numbered years to either the fall of odd years or the fall of even years to coincide with national, state and county elections. Although none of these measures passed in 2013, all of them are still on the table for consideration in 2014.

Following is a brief summary of the two bills that did pass in 2013:

Senate Bill 122 - Nondisclosure of Provisional Voter Lists

Originally proposed by the secretary of state as Senate Bill 177, this bill would prohibit the release of names of voters who cast provisional ballots at any election during the period beginning when the provisional ballot is cast until the county canvass is complete. If candidates, campaigns, political parties or members of the public request provisional voters' names, the CEO cannot provide the information until after the county canvass.

The purpose of the bill is to protect provisional voters from being contacted by candidates and others after the election, when campaign season is over, and to protect CEOs from being required to fill these requests during the busy time leading up to the county canvass.

The concept behind the bill arose in the 2012 election when candidates involved in close races requested provisional voter

County Clerk Notarial Duties

In 1998, the Kansas Legislature passed a law giving county election officers notarial powers. The law (K.S.A. 53-504) states that any county clerk or deputy county clerk, or election commissioner or assistant election commissioner, may perform notarial acts within this state. The law does not require these individuals to (1) file an application with the secretary of state, (2) pay a filing fee to the secretary of state, (3) obtain a bond, or (4) provide the secretary of state with a copy of the seal used to notarize documents. In addition, there are no training requirements that must be completed in order to provide notarial services.

Also, it should be noted that the law does not actually make these individuals notaries public; it merely authorizes them to perform notarial acts. Notaries public are required to file their manual signatures with the secretary of state's office; individuals authorized to administer notarial acts under K.S.A. 53-504 are not required to do so unless they notarize a document that is sent to another country, as in the cases of authentications and apostilles.

A few reminders for persons performing a notarial act are: (1) The person signing the document must appear in person. (2) The person who signs the document must provide sufficient documentation for the notary to identify the signer. (3) The person performing the notarial act cannot have a financial or beneficial interest in the transaction. (4) The person signing the document should have some understanding of the contents of the document. For example, the signer should not be unconscious, mentally disabled, under the apparent influence of alcohol or drugs. (5) Although it is not required, it is recommended that a seal, either the county clerk seal or the county seal would be sufficient, be applied when the notarial act is performed. There are instances where a notarized document has been rejected without a seal accompanying the notary signature. For a complete list of notarial responsibilities, visit www.sos.ks.gov/forms/administration/book.pdf. ■

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Secretary Kobach and Staff Attend KCCEOA

Secretary of State Kris Kobach appreciated the opportunity he and his staff had to discuss election issues with county election officers at the annual spring conference of the Kansas County Clerks and Election Officials Association. This year's conference, with the theme "Little Apple Meets Big Apple," was held May 8-10 in Manhattan at the Hilton Garden Inn.

KCCEOA President Donna Zimmerman, Barton County Clerk, and her officers and planning committee allotted most of one day out of the conference schedule to the secretary of state's office for a discussion of current issues in election administration. In previous years, since passage of the federal Help America Vote Act of 2002, the discussion of elections had taken a day or day and a half. The need for a reduced amount of time is a sign that things are currently somewhat slower on the national and state legislative front, with fewer new laws to implement and fewer changes for election officers and poll workers to adapt to.

Besides Secretary Kobach, presenters from the SOS office included Assistant Secretary of State Eric Rucker, State Election Director Brad Bryant and Assistant State Election Director Bryan Caskey. Secretary Kobach's opening remarks included summary information about the 2012 election cycle, a status report on the implementation of the Secure and Fair Elections Act, the status of the interstate voter registration data crosscheck program hosted by his office, and comments about future trends that election officers should be prepared for.

Assistant Secretary of State Eric Rucker discussed state legislation with emphasis on the bills being considered to move local elections from the spring of odd years to the fall of odd years or the fall of even years. Rucker also discussed the SECURE Act (Stopping Election Crime by Uniting Regulation and Enforcement), which is a bill proposed by the secretary of state to increase penalties for some election crimes and to grant prosecutorial authority to the attorney general and the secretary of state.

A panel of county election officers provided analysis of the spring election bills from a county perspective. Three election officers were invited by the SOS office to discuss the options among the various spring election bills, the components of the bills, and the advantages and disadvantages of each. The panelists were:

- **Don Pyle**, Crawford County Clerk and Chair of the KCCEOA Election Committee, who moderated the panel
- **Linda Buttron**, Jefferson County Clerk
- **Bruce Newby**, Wyandotte County Election Commissioner

Other topics discussed by Bryan Caskey and Brad Bryant included:

- The ELVIS voter registration system, the schedule for future releases, list maintenance activities, and the interstate crosscheck program
- Phase 2 of the SAFE Act and the collection of US citizenship documents from new applicants for voter registration, the division of motor vehicles' role in voter registration, and strategies to reduce the number of records in the voter registration database that are in suspense (incomplete) due to lack of citizenship documentation
- The future of elections, including new voting equipment, electronic poll books, the growing popularity of vote centers, diminishing federal HAVA funding, and the future of the HAVA endowment program

The discussion of the future of elections concluded with a panel of county election officers who had been asked to present their thoughts on trends they see coming in the future. Much of the discussion centered on how to serve voters better and the use of web sites and other technology to inform the voting public. The use of social media was described as an important tool and, even more, an expectation by the voting public. The panelists were:

- **Brian Newby**, Johnson County Election Commissioner, who moderated the panel
- **Janet White**, Miami County Clerk
- **Jamie Shew**, Douglas County Clerk

The secretary of state's office extends its appreciation to the six panelists who gave their time in preparing for the panel discussions and for the value their efforts added to the day's discussions.

At the end of the SOS presentation Secretary Kobach swore in next year's KCCEOA officers:

President **Sharon Seibel** - Ford County Clerk
Vice President **Jamie Shew** - Douglas County Clerk
Secretary **Sharon Wolters** - Smith County Clerk
Treasurer **Robert Wyatt** - Norton County Clerk

We want to thank **Donna Zimmerman** for her leadership during her tenure as president, and we wish the best to the new officers as they assume their new duties. ■



Secretary of State Kris Kobach swears in the new KCCEOA officers. (From left to right) President Sharon Seibel (Ford County), Vice President Jamie Shew (Douglas County), Secretary Sharon Wolters (Smith County) and Treasurer Robert Wyatt (Norton County). Photo courtesy of Donna Zimmerman.

Johnson County Wins Harvard Bright Idea Award

In April, 2013, Johnson County Election Commissioner Brian Newby was notified that his office had won a Bright Idea Award for its use of iPads at polling places. The initiative at Johnson County is called the Election Worker Electronic Resource Guide program.

The Harvard Kennedy School of Government's Ash Center for Democratic Governance and Innovation has an Innovations in American Government Award Program to recognize "noteworthy and promising government programs and practices" so others can learn about creative initiatives and adopt them into their own procedures.

Bright Idea award recipients are highlighted on the Ash Center's Government Innovator's Network, and they receive a certificate and a seal that may be displayed on the county's website and promotional materials. Winning the Bright Idea award keeps the county in the running for a \$100,000 grand prize award.

Here is a description of the Johnson County program: Johnson County has matched election worker needs with technology by using electronic aides in election day

administration. This innovative program evolved from training election workers online to the deployment of an Election Worker Electronic Resource Guide, which includes training presentations, opening and closing checklists, countywide precinct maps, a keyword-searchable soft copy version of the training manual, examples of photo IDs that are acceptable for voting, and a street index guide that is used to direct voters to their correct voting locations.

The iPads store the entire street index guide used to direct lost voters to the correct polling places. The entire guide is included and indexed for fast retrieval. This saves money in printing because the 500-page paper indexes are no longer printed.

The iPad system also includes the following components in addition to the street index guide:

- The training manual which is searchable based on keywords.
- A countywide map which can be enlarged or shrunk by "pinching" the screen.

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ADA Compliance

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www.ada.gov/votingprt.pdf, and an adapted version is included in the Kansas Election Standards on page II-32.

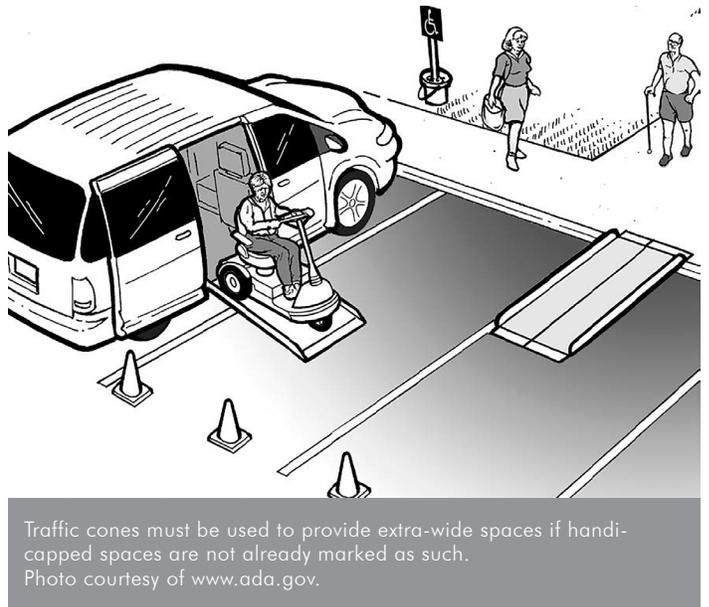
It is important to be reminded of the polling place accessibility requirements from time to time. Some CEOs may have had problems pointed out to them in the elections held in the fall of 2012 or the spring of 2013. It is not just a question of having the equipment and voting machines needed to provide a fully accessible voting experience; the equipment must be deployed each election and poll workers must be trained to use it.

One feature of the HAVA Act that is not often discussed is the requirement that the state establish an official complaint procedure. HAVA complaints may be filed with the Secretary of State's office for specified purposes outlined in HAVA, including denial of a provisional ballot or inaccessible polling places or ballots/voting machines. Often when HAVA complaints are received they do not pertain to the issues outlined in HAVA. In the April, 2013 local election, however, one complaint was based on a voter's inability to open the door to the polling place. The CEO discovered that the site had automatic door openers and poll workers had been trained to place signage in the appropriate places and to unlock the doors. However, the poll workers failed to open both sides of the double doors, and the side with the automatic opener was left locked. This situation serves as a reminder that not only must polling places be equipped for full accessibility, but poll workers must ensure that accessible equipment is fully deployed and operable.

Here are some reminders derived from common complaints:

- Doorways must be wide enough for wheelchair access. Handles should be provided instead of doorknobs. Automatic door openers or call buttons may be used or a poll worker may be stationed at the door to open it for voters needing assistance.
- Signs must be posted indicating where accessible entrances are located if the site has more than one entrance and not all entrances are accessible.
- At least one ADA-compliant voting device must be provided at each polling place, and it must be plugged in and in working order.
- Walkways must be hard surfaced without large cracks that make wheelchair access difficult.
- Handicapped parking spaces must be provided and marked. Cones must be used to provide extra-wide spaces if they are not already marked as such.

County election officers in Kansas have a good record of providing accessible polling places, especially in the years since HAVA was enacted. Constant attention must be paid to this aspect of election preparation to allow voters with disabilities the same access to the ballot as other voters have and to prevent the filing of complaints. There are interest groups who may assist CEOs in ensuring accessible voting, or they may be sources of complaints if CEOs are not diligent about serving their voters with disabilities.



Traffic cones must be used to provide extra-wide spaces if handicapped spaces are not already marked as such. Photo courtesy of www.ada.gov.

The Disability Rights Center of Kansas randomly surveyed polling places in various counties at the general election in November, 2012. DRC followed up by writing letters to CEOs in four counties summarizing their findings. They did not file formal complaints, but their letters serve as reminders of the importance of constant attention to accessibility issues. Some of the deficiencies identified are: lack of marked curbside voting places, lack of magnifying glasses, lack of door openers or call buttons, and lack of communication cards or pen/paper for communicating with voters with hearing impairments.

When deficiencies are identified or suggestions made to improve the voting experience for voters with disabilities, election officers should incorporate them into their planning procedures for the next election. Accessibility and full ADA compliance must be provided each election; it is not a one-and-done proposition. Once the county has made the appropriate accommodations at one election, however, it is a smaller task to review and maintain full accessibility in the future. ■

HAVA Funding and Endowment Program

Over the years the secretary of state's office has received money from the federal government in order to assist in the implementation of HAVA. The federal funds flowed to the secretary of state's office from 2003-2010 and were supplemented by earned interest, ELVIS workstation fees collected from counties, and the required 5% matching funds. The HAVA funds have been used in a variety of ways to ensure compliance with the requirements of HAVA and to provide the best possible elections in the state of Kansas. As of June 30, 2013, the remaining HAVA funds balance will be approximately 18 percent of the original funding with \$4.9 million remaining. If spending remains consistent with current levels, HAVA funds will be depleted in 2017 or 2018.

HAVA funds have already run out in many states, and while Kansas has been judicious in using its share of the funding, the state is now in the position of determining how to continue to fund the HAVA requirements despite having the federal funding associated with it run out.

Excluding annual training sessions and enhancements, the yearly cost to maintain ELVIS is \$750,000. This cost includes use of the state's secure network, third party software maintenance, and ELVIS support and maintenance, which includes the help desk.

With federal funds running out and expenses being somewhat constant, workstation fees will rise from \$300 per workstation to \$500 per workstation in calendar year 2014. This increase is still significantly lower than the original fee of \$1,500 (an amount that was never charged), or the \$1,100 that was the first charge that was actually billed. In calendar year 2015 there will be an additional increase that will be determined based in part on contract renegotiations with ES&S next summer and fall.

As our current ELVIS contract expires, we will be exploring additional options in order to save money. Beyond renewing the contract with ES&S at a similar rate and service options, or even renegotiating with new services and pricing, the secretary of state's office is considering opening the bidding to other vendors or possibly assuming in-house responsibility of maintenance and support of the ELVIS system.

The ultimate goal is for ELVIS to be sustained entirely by the secretary of state's office and county election offices.

With the expiration of federal funding there will be changes to the HAVA endowment program as well. The endowment program for

this year will encompass 2013-2014, which includes purchasing for the 2014 election. The total dollar amount will be \$500,000, and the state percentage match will be fifty percent. Voting machines with VVPAT (paper trail) capability, AutoMarks, and precinct optical scanners will receive higher percentages paid by the state. The deadline to submit the application is August 1, 2013. Any application received after this date will not be considered. Each county will receive an electronic application by early June. The HAVA endowment program will be reassessed annually after the 2013-2014 period. ■

Sanborn Institute To Be Held in June

One of several valuable opportunities for county clerks to receive training in their job duties and to interact with colleagues comes up this year in June. The Sanborn Institute and Master Academy is sponsored by the Kansas County Clerks and Election Officials Association and operated by the Wichita State University Hugo Wall School of Urban and Public Affairs. The program offers county clerks a three-year certification program and annual continuing education for master clerks, who are graduates of the program.

With a freshly sworn-in group of county clerks this year, there are enough potential enrollees to conduct Year 1 of the Sanborn Institute. Not surprisingly, the last time Year 1 was offered was 2009, following the 2008 election.

Clerks at the institute will study public administration, social/interpersonal issues, personnel and records management, and many other topics. The office of the secretary of state is pleased to be invited to offer presentations on election law, election technology and current issues to the Year 1 class. This year the SOS presentation at the Master Academy will focus on state and national trends in election law, election reform, and election technology. The Master Academy presentations involve other presenters, and the session on election reform consists of a panel which includes legislators, researchers and a county election officer. ■

Unisyn Voting System Certified in Kansas

On May 1, 2013, Secretary of State Kris Kobach issued a letter certifying the Unisyn OpenElect Voting System, Version 1.1.0. Representatives of Unisyn Voting Solutions from Vista, CA, had applied in 2012 for certification in Kansas.

Before any voting system may be purchased or used by any county for an official election in Kansas, it must be certified by the office of the secretary of state. The May 1 certification authorizes Unisyn to market its system to county election officers.

The policy of the Kansas Secretary of State's office is to require any voting system to be tested and certified at the federal level before being considered for certification in Kansas. The Unisyn system was tested by Wyle Laboratories, Inc., which is one of the qualified independent testing authorities recognized by the federal Election Assistance Commission. The system was issued EAC Certification Number UNS10121966-OE on January 13, 2010, and a subsequent modification was approved on April 9, 2012.

Johnson County

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- All training materials (presentations and videos), as well as samples of all valid photo IDs.

The inclusion of these materials in the iPad system reduces printing costs significantly—training manuals, poster-size maps, and other materials needed by poll workers are no longer printed.

“Most of our election workers took to the iPads fairly quickly,” Brian Newby said. “Our student election workers helped in November as technical support.”

He added that his office would like to evolve to using the iPads as electronic pollbooks, but they need to purchase more units in order to do so. ■

Unisyn is the first system to be reviewed and certified in Kansas in nearly a decade. After passage of the Help America Vote Act of 2002, there was a flurry of new systems and upgrades certified as jurisdictions across Kansas and the United States procured new systems to comply with HAVA. As the HAVA-procured systems begin to age, voting system manufacturers are seeking approval of their newest systems so they may market them to counties for the next generation of voting equipment.

Unisyn has established a relationship with Henry Adkins & Son from Clinton, MO, to assist in selling and servicing the equipment in Kansas. Adkins is a well-known company that has sold equipment and voting supplies and printed ballots for many Kansas counties for a number of years. ■

Legislature

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lists with the idea of contacting voters whose ballots were provisional due to lack of photo ID and offering the voters assistance in submitting their IDs to the CEO before the canvass.

Some CEOs had received requests for provisional voter lists in previous years in preparation for recounts or election contests, but a new category of provisional voters was created by the 2011 SAFE Act's photo ID requirement. Under SAFE, voters who lack IDs at the time they cast their ballots may submit IDs before the canvass in order to have their provisional ballots count. This is the only category of provisional voters who may remedy the cause of their provisional ballots after the election. When candidates and others contact voters after they have cast their ballots, it extends the campaign season unnecessarily.

Exceptions: The bill does not prohibit the disclosure of names of advance voters or the names of any voters as ordered by a court, nor does it affect the activities of authorized poll agents.

House Bill 2164 - Jury Duty Noncitizen Lists

Courts are required to provide the secretary of state with lists of persons who are disqualified from jury duty due to non-U.S. citizenship. The information will be used to determine whether any such persons are registered to vote. The bill also contains provisions related to grand juries. ■