

November 15th 2012

Below is a verbatim recount (via Copy and Paste) of recent email exchanges between myself (Daniel R. Martin ["DRM"], Republican Canvass Board appointee) and Molly Tayer ["MT"], Boulder County Deputy Clerk Elections Coordinator.

**Summary:** DRM maintains that all Canvass Board Meetings should be open to the public while Boulder County Clerk and Recorder Hillary Hall, via subordinates, asserts these meetings should all be held behind closed doors.

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FROM: DRM to Mary Eberle, CC: Canvass Board  
DATE: 12 Nov 2012 4:05 PM  
SUBJ: BC\_CB: Public Meeting Notices  
TEXT: "...please continue to send me and the others notices of upcoming Canvass Board Meetings, which are all open to the public, so I can post them on the public Canvass Board Website:"  
[http://www.dansher.com/BC\\_CB/2012\\_BC\\_CB.html](http://www.dansher.com/BC_CB/2012_BC_CB.html)

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FROM: MT to DRM, Canvass Board, County Atty Brooke McKinley  
DATE: 12 Nov 2012 4:49 PM  
SUBJ: BC\_CB: Public Meeting Notices  
TEXT: "The Canvass Board is an appointed committee and the meetings are not public. Certified watchers may attend, as provided for in Rule 8.6.5."

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FROM: DRM to MT CC: Canvass Board, others  
DATE: 12 Nov 2012 8:46 PM  
SUBJ: BC\_CB: Public Meeting Notices  
TEXT: "I fully agree that Watchers may attend Canvass Board meetings. Our views diverge at that point.

There is nothing in either CRS TITLE 1 "ELECTIONS" or Colorado Secretary of State Election Rules [8 CCR 1505-1] that even implies, much less explicitly states, that Canvass Board meetings are to be shrouded behind closed doors. Indeed, it would be unseemly for State Election Officials [1-1-104.(10)] - *the* Canvass Board - to even *consider* keeping our procedures and deliberations secret.

Title 1 C.R.S. 1-40-106 obviously envisions at least one type of appointed state board holding public meetings, as does the appointed Colorado Elections Best Practices and Vision Commission itself. Further:

*TITLE 24 - ARTICLE 6 - Colorado Sunshine Law  
24-6-402. Meetings - open to public - definitions.*

*(1) For the purposes of this section:*

*(a) "Local public body" means any board, committee, commission, authority, or other advisory, policymaking, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.*

*(b) "Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.*

If, in spite of the above, Clerk Hall or Counselor McKinley wish to assert that Canvass Board meetings should be hidden from public view then they should publicly present their supporting arguments and citations."

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FROM: MT to DRM (only)

DATE: 14 Nov 2012 4:01 PM

SUBJ: BC\_CB: Public Meeting Notices

TEXT: "Here is the information from the County Attorney regarding the role of the canvass.

The canvass board is not a “local public body” as defined in the Colorado Sunshine Law, Colo. Rev. Stat. § 24-6-402, and, consequently, is not subject to the requirements of the Colorado Sunshine Law. A “local public body” is “any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity *to which a political subdivision, or an official thereof, has delegated a governmental decision-making function* but does not include persons on the administrative staff of the local public body.” Colo. Rev. Stat. § 24-6-402(1)(a) (emphasis added). Neither Clerk Hall nor the Board of County Commissioners has delegated any of their governmental decision-making authority to any member of the canvass board. Consequently, the canvass board is not a local public body subject to the requirements of Colo. Rev. Stat. § 24-6-402.

The canvass board is purely a creature of statute with limited and defined functions. The only requirements governing the canvass board are those provided for under the Colorado Election Code. Specifically, the canvass board has three duties during an election: (1) confirm that the number ballots voted does not exceed the number of ballots cast; (2) confirm that the number of ballots cast does not exceed the number of registered electors in the precinct; (3) certify the abstract of votes and transmit it to the secretary of state. Colo. Rev. Stat. § 1-10-101.5. At least two members of the canvass board are also required to *observe* the post-election audit. Colo. Rev. Stat. § 1-7-514(4) (emphasis added). Under the election rules governing the canvass board, the only people who are expressly permitted to observe the board perform its duties are certified watchers. COLO. CODE REGS. § 1505-1 Rule 41.13, *see id.* at Rule 8.6.5.

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FROM: DRM to MT (only)

DATE: 14 Nov 2012 4:01 PM

TEXT: "Please also send to me the electronic .pdf (or .doc, etc) file that contains the date of the atty's complete opinion, all citations, etc.

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Note: Marilyn Marks is an elections integrity activist in Colorado:

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FROM: Marilyn Marks to DRM, Canvass Board, others

DATE: 14 Nov 2012 11:18 PM

TEXT" "I'm stunned by the outrageous and altogether lawless position of the county toward the canvass board and Boulder County's attempt to further shut down transparency of the election process. It is very concerning. See my highlight and red font below. Highlighted is the clear language that the county is ignoring . The language is clear that the canvass board a public body and subject to the Sunshine Laws.

There is much to be said about what is “between the lines” of the County declaring that the canvass board meetings are meetings of private citizens to be held behind closed doors to determine whether our elections are certified. If the public understood the lawless and dangerous implications of that, they would surely be stunned and concerned.

While I am not an attorney and cannot offer legal advice, I can certainly say from a citizen’s standpoint that I believe that citizens will never tolerate their elections being decided in the dark by a private citizen board or elected official to the exclusion of the press and the voters. A canvass board with no sunshine, no accountability, and with ultimate power to certify or not certify an election and conduct a recount is not something that a mature democracy will tolerate.

The purposeful misreading of the statute below says something about the shameful state of Colorado’s elections and the brazen attitude of the officials. To make matters worse, the Secretary of State today issued another anti-transparency opinion shrouding the scores of thousands of high-risk provisional ballots not yet counted in total darkness with no oversight. While other states have public vetting of provisional ballots given their high-risk nature, the SOS just reinforced their anti-transparency stance that makes Colorado one of the worse in the nation.

I implore the board, as a public board, to insist on following the sunshine laws and not allow anything but a transparent process."

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Stay tuned for further developments...