

Hall, Hillary

From: Hughes, David
Sent: Friday, November 16, 2012 1:54 PM
To: hilary.rudy@sos.state.co; suzanne.staiert@sos.state.co
Cc: Hall, Hillary
Subject: Boulder County Canvas Board

Dear Hilary and Suzanne:

I understand questions have arisen in Boulder and other counties related the role of the canvas board and whether the canvas board would be a proper defendant in a lawsuit under Colorado's Open Meetings Law or CORA. Hopefully, this e-mail will serve to clarify Clerk Hall's position on these issues.

Regarding the Open Meeting Law, Clerk Hall does not believe that the canvas board is subject to any statutory open meetings requirements. This is because the canvass board is not a "local public body" as defined by Colo. Rev. Stat. § 24-6-402, and, consequently, is not subject to the requirements of the Open Meetings 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 Boulder County Board of County Commissioners has delegated any of their governmental decision-making authority to any member of the canvass board.

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. Consequently, Clerk Hall strongly believes that the canvass board is not a local public body subject to the requirements of Colo. Rev. Stat. § 24-6-402 and is prepared to defend that position should she be challenged on it. Even assuming a lawsuit were filed alleging that the canvas board is subject to the Open Meetings Law, the only remedy that may be sought in