

## **Chapter II. Election Administration**

*Revised 7/7/14*

With very few exceptions, the county election officer is the person in charge of conducting all official elections in the county. Official elections are those required or authorized by state law. Some of the exceptions are: special elections on the dissolution of cities, election of boards of directors of watershed districts, and election of members of county extension councils. In these and other exceptional cases, local governing bodies are charged with conducting the elections.

### **a. Types of Elections**

The major types of elections are: city/school/community college, national/state/county/township, primary elections, question submitted, mail ballot, presidential preference primary, recall, and advisory elections, although advisory elections are not official or binding.

#### **1. City/School/Community College Elections**

State law sets the general election for city officers, local school board members, and members of the boards of trustees of community colleges on the first Tuesday in April of odd-numbered years. [KSA 25-2010, 25-2107, 71-1413] However, some cities set different schedules by adopting charter ordinances through the exercise of their constitutional home rule powers. [Kansas Constitution Article 12, Section 5; KSA 25-2107]

Each city adopts a specific form of government from the types allowed by law. Adoption of the form of government is done through a charter ordinance. Some of the types of city government are: mayor-council, modified mayor-council, commission, and city manager. In conducting city elections it is important to know the class of the city (first, second or third class, depending on population), the form of government, and the schedule adopted by the city for electing officers.

City/school/community college elections are nonpartisan. Candidates run for these offices with no party designation on the ballot. [KSA 25-2009]

A primary election is held on the Tuesday five weeks before the general election only if the number of candidates who filed for a given office is more than three times the number of positions to be filled. When required, the purpose of the primary is to reduce the number of candidates at the general election to no more than two per position. [KSA 25-2021, 25-2108a, 71-1415]

The candidate filing deadline is at noon on the Tuesday ten weeks before the general election, five weeks before the primary. [KSA 25-2007(c), 25-2109, 71-1414(c)] Candidates are not permitted to withdraw after the filing deadline. [KSA 25-2020(c), 25-2106]

Election laws of a general nature apply to school elections unless they conflict with specific statutes governing school elections. [KSA 25-2009(b)] However, laws which specifically apply to partisan elections do not apply to school elections. [KSA 25-2009(a)] Many unified school districts are multi-county, meaning they comprise all or parts of more than one adjacent county. Elections in multi-county school districts require close coordination between the county election officers, especially in ballot printing and distribution. The county containing the greatest proportion of the population of the district is the home county. The county election officer in the home county coordinates the election with all other participating counties. [KSA 25-2007]

In conducting school elections it is crucial to know which of three voting plans is used by the district:

- Voting Plan A: Board members are voted on at large in both the primary and the general elections.
- Voting Plan B: Board members are nominated by member districts in the primary and elected at large in the general election, and
- Voting Plan C: Board members are voted on by member district in both the primary and the general elections.

[KSA 25-2005(c), 71-1420, 72-8003]

### **Legal References**

KSA Chapter 25, Article 20 (school elections)

KSA Chapter 25, Article 21 (city elections)

KSA Chapter 71, Article 14 (community college elections)

## **2. National/State/County/Township Elections**

National, state, county and township offices are elected at the same time. The general election is held on the Tuesday following the first Monday in November of even-numbered years. [KSA 25-101, 25-1601] A primary is held on the first Tuesday in August for the nomination of Democratic and Republican candidates. Minor party candidates are nominated for the general election at state party conventions, and independent candidates (candidates running with no party affiliation) file by petition for the general election.

Most national/state/county/township officers take the oath and begin their terms of office on the second Monday in January succeeding the election, but there are exceptions: county treasurer, township offices and precinct committee positions have special statutory rules. For some, the oath-taking occurs on the day the official takes office, and for some it occurs earlier. (See Section VII e and the chart titled “Oaths and Commencement of Terms of Office.”)

National offices are: President and Vice President of the United States, United States Senator, and member of the United States House of Representatives.

State offices are: Governor and Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of Insurance, Kansas Senator, member of the Kansas House of Representatives, member of the Kansas State Board of Education,

Justice of the Kansas Supreme Court, Judge of the Kansas Court of Appeals, District Court Judge, District Magistrate Judge, and District Attorney (for those counties designated by law to have a district attorney instead of a county attorney). Currently, six counties have district attorneys: Douglas, Johnson, Reno, Sedgwick, Shawnee and Wyandotte. [KSA 22a-101]

County offices are: county commissioner, county attorney, clerk, treasurer, register of deeds, and sheriff. Each county has an elected county attorney (a county office) unless the law specifically states that the county will have a district attorney (a state office). No county has both. Some counties choose to have a county counselor in addition to the county or district attorney, but counselors are appointed by the county commissioners, not elected.

Township offices are: trustee, clerk and treasurer.

**Note:**

Precinct committee positions for the Democratic and Republican parties are elected at the national/state/county/township *primary* election. [KSA 25-3801(a)] The law states that one man and one woman shall be elected from each precinct for each of the two parties authorized to participate in the primary. They serve two-year terms, facing re-election at the primary every two years. These are considered political party positions, not government offices. These are the only positions *elected* at the primary; all other offices on the primary ballot are *nominated* to run in the general election. Because they are elected at the primary, precinct committeemen and committeewomen do not appear on the general election ballot.

Elections for national/state/county/township offices are partisan, meaning each recognized political party is allowed to nominate one candidate for each office, and the candidates nominated by the parties run under party names. However, there is no law requiring a candidate seeking a particular party's nomination or representing a party in the general election to be officially affiliated with the party.

The exception to the partisan nature of these elections is the judicial retention offices, including all Supreme Court Justices and Court of Appeals Judges, and District Court Judges and Magistrates in judicial districts where judges are chosen by the merit selection process. The merit selection process means the Governor appoints the judges and they face a Yes/No election by the voters every four or six years on whether to retain them in office. Seventeen of the 31 judicial districts in the state use this method. The other 14 judicial districts elect their judges in partisan elections.

Also, in certain counties there are nonpartisan offices such as the district commissioners in Wyandotte County and nonpartisan county commissioners in Johnson County.

The elections for national/state/county/township offices are divided according to which offices are elected (or retained) in alternating even-numbered years, as follows:

**Presidential Year 2012, 2016, 2020, etc.**

President/Vice president

One U.S. Senator (except in 2012, 2018, 2024, etc.)

All 4 U.S. House of Representatives members

All 40 Kansas Senators

All 125 Kansas House of Representatives members

State Board of Education Districts 2,4,6,8,10

Retention of some of the 7 Kansas Supreme Court Justices

(which positions depends on the dates their terms began, their ages and retirement)

Retention of some of the 14 Kansas Court of Appeals Judges

(which positions depends on the dates their terms began, their ages and retirement)

District Court Judges

(some elected, some retained, depending on the judicial district)

District Magistrate Judges

(some elected, some retained, depending on the judicial district)

All 6 District Attorneys

(Douglas, Johnson, Reno, Sedgwick, Shawnee and Wyandotte Counties)

Some County Commissioners

(depending on county's system of staggered terms)

County Attorney

County Sheriff

County Clerk

County Treasurer

County Register of Deeds

Township Trustee

Township Treasurer

**Gubernatorial Year 2014, 2018, 2022, etc.**

Governor/Lieutenant Governor

Secretary of State

Attorney General

State Treasurer

Commissioner of Insurance

One U.S. Senator (except in 2012, 2018, 2024, etc.)

All 4 U.S. House of Representatives members

All 125 Kansas House of Representatives members

State Board of Education Districts 1,3,5,7,9

Retention of some of the seven Kansas Supreme Court Justices

(which positions depends on the dates their terms began, their ages and retirement)

Retention of some of the 14 Kansas Court of Appeals Judges  
(which positions depends on the dates their terms began, their ages and retirement)  
District Court Judges  
(some elected, some retained, depending on the judicial district)  
District Magistrate Judges  
(some elected, some retained, depending on the judicial district)  
Some County Commissioners  
(depending on county's system of staggered terms)  
Township Clerk

### **3. Primary Elections**

Primary elections are held to reduce the field of candidates for the general election. There are two types.

#### **a. Nonpartisan primaries at city/school elections**

On the first Tuesday in April of odd-numbered years, elections are held for city offices, local school board members and community college boards of trustees (in some counties). These positions are all nonpartisan. Five weeks before the general election a primary is held if needed to reduce the field of candidates for a given position to one, two or three. Thus, if one, two or three candidates file for a particular position, no primary is held and all the candidates' names are printed on the April general election ballot. But if more than three candidates file, a primary is held to eliminate one or more candidates. In at-large elections (vote for three or fewer, vote for four or fewer, etc.), a primary is required if more than three times the number of candidates file as there are positions to be filled. [KSA 25-2006(b), KSA 25-2108a(a), KSA 71-1415]

#### **b. Partisan primaries at national/state/county/township elections**

In even-numbered years when the general election is held on the Tuesday following the first Monday in November, a partisan primary is held on the first Tuesday in August. [KSA 25-202] Each of the two major parties—Democratic and Republican—is authorized by law to nominate one candidate to represent the party in the general election.

Kansas law specifies that in order to vote in a party's primary, a registered voter must (1) be affiliated with the party before the candidate filing deadline, or (2) if unaffiliated, sign a form on primary election day affiliating with the party before receiving the party's ballot. However, federal court cases have determined that states may not pass laws dictating who may vote in parties' primaries, so since 2004 the two major parties have determined who may vote. Since 2004, the Republican Party has allowed party affiliates and unaffiliated voters who affiliate with the party to vote in the primary. From 2004 to 2012, the Democratic Party allowed party affiliates and unaffiliated voters to vote, regardless of whether they affiliate with the party. Beginning with the 2014 election, the Democratic Party uses the same rule as the Republican Party, allowing party affiliates and unaffiliated voters who join the party to vote in the Democratic primary. (See Section I f, Party Affiliation Deadline)

Minor parties do not participate in the primary election; they nominate their candidates at state party conventions. [KSA 25-302]

Independent candidates also do not participate in the primary election. They are nominated by petitions and, if their petitions are determined to be sufficient, they go directly onto the general election ballot. [KSA 25-303]

#### **4. Question Submitted Elections**

Sometimes referred to as special elections, these are elections which pose a question to the voters in a specific jurisdiction, hence the name “question submitted elections.” They must be specifically authorized by a state statute. Most of the rules for conducting these elections are contained in the specific statutes which authorize the elections.

Special elections can be brought about three ways:

- (1) a statutory initiative petition is submitted requesting the election,
- (2) the governing body of a jurisdiction calls the election, or
- (3) a protest petition is circulated and filed in opposition to an action taken by a governing body. If a protest petition is deemed sufficient, it requires an election before the action by the governing body may take effect.

Often local jurisdictions will schedule their special elections on the same dates as regular elections to reduce expenses. The jurisdiction must pay all the direct costs of the special election if it is held on a day of its own. If, however, the special election is held on a day when all the voters in the county are eligible to vote in some other election, the jurisdiction is responsible for reimbursing the county only for those expenses which are additional and directly attributable to the special election. [KSA 25-2201, KAR 6-1-1, 6-1-2, AGO 93-107]

The only *statewide* question submitted elections are those which ask the voters’ approval of amendments to the Kansas Constitution.

If a local governing body wishes to conduct an election which is not specifically authorized in law, it is called an advisory election. (See Section 7 below.)

When a special question submitted election is authorized by the governing body in a local jurisdiction or required due to the submission of a valid petition, the following guidelines may be consulted by the county election officer conducting the election.

### **Guidelines for Special Question Submitted Elections**

#### **1. Identify:**

- the jurisdiction (county, school district, city, township, hospital district, fire district, library district, watershed district, recreation district, drainage district, etc.)
- the governing body of the jurisdiction (school board, city council or commission, board of directors, etc.)
- the type of election (bond election, mill levy, sales tax, recall, change of form of government, disposal of property, corporate swine production, etc.)

- the voters (all registered voters in the jurisdiction? property owners? taxpayers? residents? etc.)

If the type of election is a mail ballot, the county election officer should call the Secretary of State's office because a written plan will have to be submitted. (See Section 4 below.)

**2. Identify the statutes authorizing the election.** County election officers are not required or authorized to do people's legal research for them. People seeking to hold elections may hire attorneys, or the county attorney or county counselor might help. The Secretary of State's office might be able to provide statutory citations, too.

If the statutes do not provide specific guidelines on a certain aspect of the election, refer to the general statutes governing that situation. As an example, see the note on petitions under #3 below.

If there is no statute authorizing the type of election being requested, it is an advisory election. This is a special situation. Call the Secretary of State's office. (See Section II a 7.)

**3. Determine:**

- what qualifications must be met to cause the election (an ordinance passed by a city, a resolution passed by a school board or county commission, a petition submitted to the county election officer or another official, etc.)

Note: If a petition is involved and if the statutes governing the specific type of election do not explain the petition requirements, go to the general petition requirements in KSA 25-3601 et seq.

- who actually calls the election and sets the date of the election (the county election officer or the governing body?)
- who publishes the notice of the election in the newspaper (the county election officer or the governing body?)
- what newspaper(s) should the publication be in? Some might be in the official newspaper of the jurisdiction, others in a newspaper of general circulation.
- who pays the costs of the election (county or governing body?)

[KSA 25-2201, KAR 6-1-1, 6-1-2]

**4. Once the date of the election is set, build a calendar, including the following dates.**

- publication date(s) of notice of the election [KSA 25-105]  
(Usually, the county election officer publishes.)
- publication of notice of close of registration [KSA 25-2310, 25-2311, KAR 7-23-4]  
(county election officer publishes)
- publication of change of polling places (if applicable) [KSA 25-2701(a)]
- publication of notice of voting equipment test (if applicable) [KSA 25-4411(b),  
[25-4610(b)]
- ballot preparation period (Contact your voting equipment vendor for help.)
- advance voting beginning date [KSA 25-1120]
- appointment of election board workers [KSA 25-2801, 25-2803]

- voter registration deadline [KSA 25-2311]
- identify, finalize polling places [KSA 25-2703]
- advance voting ballot application deadlines [KSA 25-1122]
- period for training election board workers [KSA 25-2806]
- test of voting equipment (if applicable) [KSA 25-4411(b), 25-4610(b)]
- preparation of poll books, other polling place supplies [KSA 25-2704 to 25-2710]
- election day
- canvass day (canvassers are county commissioners) [KSA 25-3104]
- recount request deadline [KSA 25-3107(b)]
- contest filing deadline [KSA 25-1434 et seq.]
- publication of results or reporting to SOS or governing body(ies)  
(not always required)

5. Follow the calendar.

## 5. Mail Ballot Elections

Kansas law has allowed local governing bodies to conduct special question submitted elections by all-mail balloting since 1983. As of April, 2012, there have been 265 mail ballot elections conducted in the state.

Mail ballot elections may not be used to elect officers; only for question submitted elections. [KSA 25-432] Additionally, the photographic voter identification provisions in Kansas law do not apply in mail ballot elections.

The governing body has the authority to decide whether to conduct a special election by mail ballot. Once it is decided to conduct an election by mail ballot, the date of the election is set by mutual agreement between the governing body and the county election officer.

The county election officer must submit a written plan for the mail ballot election to the Secretary of State, who must grant written approval of the plan before the election is conducted. Specific guidelines for the plan and examples of past plans are available to use as models. Also, it is helpful to consult the section titled “Guidelines for Special Question Submitted Elections” above.

Once a plan has been approved, the county election officer is free to conduct the election according to the plan.

A rule of thumb is to allow 90 days for the process—developing a written plan, securing approval, preparing for the election, and tabulating and canvassing the results.

### Photo ID in Mail Ballot Elections

The photo ID requirements in Kansas voting laws do not apply to voters participating in mail ballot elections, except in cases where voters apply for advance ballots. The law specifically applies the photo ID rule to advance voting but not to mail ballot elections. Thus, in the case of mail ballot elections, only voters who apply for advance ballots because they will be absent from their regular addresses during the mail ballot election period are required to comply with the photo ID requirement.

### **Ballot Return Envelopes**

The voter must complete and sign the statement on the return envelope when voting in a mail ballot election in order to be counted, and the CEO must verify the signature on the envelope with the voter's signature on file in the voter registration records. [KSA 25-433(e)] The ballot should not be invalidated if the voter fails to provide his/her residence address in the space provided on the ballot envelope. This is considered a technical error that does not invalidate the ballot. [AGO 2012-26; SOS legal memorandum dated April 10, 2013]

See Section II c 2 for information on regular advance ballot envelopes.

Costs of mail ballot elections—The *direct* costs of conducting the mail ballot election are billed to the jurisdiction that called the election. The administrative regulation dealing with costs of special elections, KAR 6-1-1, says direct expenses are “those which would not have been incurred but for the conduct of such election.” Direct costs include postage. The mail ballot act requires the payment of outgoing and return postage for ballots. Voters are not required to pay for the postage to return their ballots. This is different from advance voting ballots in a regular election because advance voting is an option, whereas in a mail ballot election this is the only way for a voter to receive his/her ballot. The postage costs may be billed to the jurisdiction for reimbursement to the county.

As a cost-saving measure for local jurisdictions and a simplification for county election officers, the Kansas Legislature in 2008 passed a law stating that when mailing ballots to voters in a mail ballot election, ballots are not mailed to inactive voters. “Inactive” is defined in the National Voter Registration Act and Kansas law as a person who the US Post Office says has moved out of the county and who has been mailed a confirmation notice. The person's registration may be canceled after the second succeeding general election following the mailing of the confirmation notice. Inactive voters are designated as such on the statewide voter registration database.

### **Legal References**

KSA 25-431 through 25-440

## **6. Presidential Preference Primary**

Kansas has conducted presidential preference primaries twice--in 1980 and 1992. Current statutes provide for a primary (PPP) every four years, but in 1996, 2000, 2004, 2008 and 2012 the PPP was canceled by the Legislature.

The Kansas PPP is a closed primary, which means only the parties whose candidates for governor received at least 5% of the vote in the last gubernatorial election may participate, and only the voters affiliated with those parties may vote. To date, only the Democratic and Republican parties have qualified. [KSA 25-4503(a)] It is referred to as a preference primary because no candidate is actually nominated at the PPP; rather, voters express their preferences among the candidates. Candidates build support nationwide

through the various state primaries and caucuses in an attempt to secure enough support to be nominated at their national conventions to represent the party in the general election.

### **Party Rules**

Each of the two major parties is required to certify to the Secretary of State by January 2 of the presidential election year the rules adopted by the party for selection of delegates to the national presidential nominating convention. The parties are not required to bind or commit convention delegates to the results of the PPP, but in the past their rules have required them to use the PPP results as a factor in determining convention delegates.

Minor parties also nominate their presidential/vice presidential candidates at their national nominating conventions, but they do not participate in the PPP in Kansas. The law limits participation in the PPP to the two parties as defined above.

### **Date of the PPP**

According to a law passed in 2000, the Secretary of State is authorized to identify five or more other states to participate in a multi-state PPP on a common date in presidential election years. If the Secretary is able to identify five or more such states, he/she certifies to the Governor, House of Representatives and Senate the names of the states and the date of the PPP. If the Secretary is unable to reach agreement with five or more states, he/she certifies that fact and specifies the date for the Kansas PPP, which must be on or before the first Tuesday in April. In either case, the certification must be made on or before November 3 of the year immediately preceding the presidential election. [KSA 25-4501(b)]

### **Candidate Filing Procedure**

Candidates must file as Democrats or Republicans, although the law does not require them to be officially affiliated with the parties. They may file one of two ways: (1) a \$100 fee accompanied by a candidate's declaration of intention, or (2) a petition containing signatures of 1,000 registered electors in the state who are affiliated with the candidate's party. Filings must be made at the Secretary of State's office before the deadline at noon seven weeks preceding the primary, or the next business day if the deadline falls on a weekend or holiday. The candidate filing deadline may shift if the Secretary of State determines a date earlier than April for the PPP.

### **Party Affiliation**

By law, the Kansas PPP is a closed primary, meaning that voters must be affiliated with either of the two major parties to vote the party's ballot. Registered voters who are unaffiliated may affiliate with either party at the polling place on the day of the PPP and vote that party's ballot. However, depending on the party, in some cases they might not be required to affiliate before voting in the primary. Courts have ruled that each party may determine who may vote in its primary and that the state may not pass laws dictating

who may vote in a party's primary. Currently, as of 2014, both major parties require affiliation with the party before voting in the presidential preference primary.

### **Ballots**

As is the case with regular closed primaries in Kansas, there is a Democratic ballot and a Republican ballot. [KSA 25-4502(a)]

As a cost-saving measure, a unique law authorizes the Secretary of State to print ballots for some or all counties. In the past the Secretary of State has allowed each county to determine if they want to print their own ballots or have the SOS print them. Some local units of government choose to have special question-submitted elections on the same ballot, which saves them much of the cost of the special elections. In such cases the county must print its own ballots.

The normal rules for ballot rotation by county and precinct do not apply to the PPP. The Secretary of State determines ballot order by drawing each party's candidates' names from a hat. The list of candidate names is then certified to each county. All ballots across the state are printed using the same order for candidates' names. [KSA 25-4503(d)]

Ballots also must allow voters to vote for "None of the names shown." There is no write-in blank. [KSA 25-4503(b)]

### **Publishing Notice of the Election**

The Secretary of State is required to publish notice of the election one time in one newspaper in each county at least 21 days before the election. The notice contains the list of candidates and the date of the election. [KSA 25-4503(c)] Counties are not required to publish notice of the PPP.

### **Canvassing**

Results of the PPP in each county are tabulated by the county election officer and certified by the county board of canvassers using the same procedure as for other elections. The Secretary of State provides an abstract of votes cast for each county to use to certify their results to the Secretary of State. [KSA 25-4505] The state board of canvassers meets on call of the Secretary of State and certifies the final statewide results. [KSA 25-4506]

### **Expenses**

The state reimburses the counties for the direct expenses of the PPP. The Secretary of State collects pre-election estimates from the counties and secures an appropriation from the Legislature to cover the counties' and Secretary of State's costs. Within 60 days after the PPP, the counties must send records indicating their actual expenses. The Secretary of State reviews these requests for reimbursement and, coordinating with the Division of Accounts and Reports, approves or rejects each item and prepares reimbursement checks and mails them to the respective county election officers. [KSA 25-4508] In determining

which expenses may be reimbursed, it is helpful to review KAR 6-1-1 and KAR 6-1-2, even though these regulations were adopted for the purpose of apportioning the expenses for special elections among subdivisions of government within the county.

### **Legal References**

K.S.A. 25-604(b)

K.S.A. 25-4501 – 25-4508

Attorney General Opinion 92-25

U.S. Supreme Court *Eu v. San Francisco Democratic Committee*

## **7. Recall Elections**

Recall is one of the statutorily-authorized methods of removing an elected official from office before the end of the term of office. Other methods provided in state law are ouster and quo warranto, but neither of these involves an election. Ouster is a court action which must be initiated by the Attorney General or the county or district attorney. [KSA 60-1201 through -1204] A quo warranto proceeding is also a court action, but it may be brought by an individual with a claim of specific injury. [KSA 60-1205]

All elected state and local officers except judges are subject to recall. [KSA 25-4301] Because judges are not subject to recall, they may be removed from office only at regular elections by either not being re-elected or not being retained. National officers (President/Vice President, U.S. Senator, U.S. Representative) are not subject to state recall laws because there are federal laws providing for their removal through the process of impeachment.

There are separate statutes governing the process for recalling state officers and local officers. [KSA 25-4305 through -4317; KSA 25-4318 through -4331]

### **Limitations on recall**

If a person being recalled is a member of a governing body, only a total of one less than a majority of the governing body may be subject to recall at a time. An officer may not be subjected to recall twice during the same term of office, nor during the first 120 days nor the last 180 days of the term. [KSA 25-4323]

### **Grounds for recall**

The grounds for recall are: (1) conviction of a felony, (2) misconduct in office, and (3) failure to perform duties prescribed by law. “Misconduct in office” is defined as a violation of law by the officer that impacts the officer’s ability to perform the official duties of the office.

The petition for recall must specify one or more of the grounds as justification for the recall effort. [KSA 25-4302]

### **Statements of officers**

The officer sought to be recalled may file a statement of 200 words or less in justification of the officer's conduct in office. This statement is filed with the Secretary of State in cases of recalls of state officers and with the county election officer in cases of recalls of local officers. The Secretary of State sends a copy of any such statement received to the county election officers involved in the state recall.

These statements and the grounds for recall as specified in the recall petition are maintained on file in the county election office for public inspection. [KSA 25-4315, 25-4329]

### **Procedure for recall of state officers**

There are three steps in the process of recalling a state officer:

- (1) application
- (2) petition
- (3) election.

The filing is done with the Secretary of State, who coordinates with county election officers to verify signatures on the application and petition and to conduct the election.

#### **(1) Application**

A recall committee of three qualified electors of the election district (for statewide offices the district is the entire state) files an application containing (a) a statement of the grounds for recall, (b) a \$100 deposit, [KSA 25-4305] (c) a list of 100 sponsors who will circulate the petition, and (d) signatures of registered voters equal to 10% of the votes cast for all candidates at the last election at which the person was elected to the office. [KSA 25-4306]

#### **(2) Petition**

The Secretary of State reviews the content and format of the application and determines whether the facts of the situation support the grounds for recall as stated in the application. If the Secretary of State determines the application is sufficient, the Secretary of State prepares a petition form and delivers it to the recall committee, which then has 90 days to circulate and file the petition containing signatures equal to 40% of the votes cast for all candidates at the last election at which the person was elected to the office. If the person being recalled was appointed to the office to fill a vacancy, the signature requirement is computed using the election at which the officer's predecessor was elected. [KSA 25-4308 to 25-4311]

#### **(3) Election**

If the petition is sufficient, the Secretary of State calls a special election within 60 to 90 days and informs the affected county election officers. [KSA 25-4312 and -4314] County election officers conduct the election, county boards of canvassers conduct the intermediate canvass in their respective counties on the Monday or second Thursday following the election, and the county election officer certifies the results to the Secretary of State. The Secretary of State convenes the state election board to conduct the final canvass.

If the results indicate the recall effort has been successful, the office is considered vacant on the day after the certification. [KSA 25-4317] The vacancy is filled according to the normal procedure for filling a vacancy in that office.

## **Procedure for recall of local officers**

There are two steps in the process of recalling a local officer:

- (1) petition
- (2) election.

The filing is done with the county election officer.

### **(1) Petition**

A recall committee of three qualified electors of the election district files a blank petition form with the county election officer. [KSA 25-4318] The petition must state the grounds for the recall effort, and the grounds must be consistent with those listed in statute:

conviction of a felony, misconduct in office, or failure to perform duties prescribed by law. [KSA 25-4302, 25-4320(a)] The county election officer transmits a copy of the petition to the county/district attorney, who reviews the petition and issues an opinion on whether the content and format are sufficient and whether the facts of the situation support the grounds for recall as stated in the petition. The attorney is allowed five days in which to issue the opinion. The attorney is required to notify the recall committee, the county election officer and the person who is sought to be recalled of the attorney's opinion regarding the validity of the petition form. [KSA 25-4322(b)]

The recall committee files with the county election officer a list of sponsors who will circulate the petition. [KSA 25-4322] Sponsors must collect signatures of currently-registered voters in the election district equal to 40% of the total votes cast for all candidates at the last election at which the person was elected to the office. If the person being recalled was appointed to the office to fill a vacancy, the signature requirement is computed using the election at which the officer's predecessor was elected. [KSA 25-4325]

The petition is filed with the county election officer. It must be filed within 90 days from the date the recall committee receives notice that the county or district attorney approved the grounds for recall. [KSA 25-4324] The county election officer has 30 days to verify signatures and determine whether the petition is sufficient to require a recall election. [KSA 25-4326]

Court actions to compel or prohibit action in the recall must be filed within 30 days of determination of the sufficiency of the petition. [KSA 25-4308]

Because the right of recall is provided in the Constitution, it is considered a fundamental right, and a liberal interpretation of the rules governing petition verification should be used. (See Section V d.)

### **(2) Election**

If the petition is sufficient, an election is scheduled by the county election officer. The election is conducted as a question submitted election because no candidate is being elected to office. The ballot asks the voters to vote Yes or No on whether the subject of the recall effort should be removed from office. [KSA 25-4328]

The county board of canvassers meets on the Monday or second Thursday following the election and certifies the results of the recall election. If there are more Yes votes than No votes, a vacancy is declared the day after the election results are canvassed and certified. The vacancy is filled according to the normal statutory procedures for filling vacancies in that office.

There are no special statutes providing for payment of the expenses of recall elections. They are generally paid by the county and the direct expenses may be reimbursed to the county by the local jurisdiction the same as other question submitted elections.

### **Legal References**

KSA 25-4301 through 25-4331

## **8. Advisory Elections**

An advisory election is an election at which the views of a particular electorate are solicited through the balloting process with respect to a specific issue or question, and the expression of such views has no binding effect upon the governing body soliciting such opinion. [*Blevin v. Board of Douglas County Commissioners*, 251 Kan. 374, 383 (1992), quoted in Attorney General Opinion 94-106]

### **Legal Basis**

Citizens do not possess any inherent right to hold an official election whenever they want on whatever issue they want. Elections must be created by law. Advisory elections are not specifically authorized by law so they are not official elections. The existence of advisory elections is acknowledged in the election crime statutes, which indirectly recognize their existence by setting legal limits on their conduct.

Cities may call and hold advisory elections pursuant to their home rule power granted in the Kansas Constitution [Article 12, Section 5] and counties may call and hold advisory elections pursuant to home rule power granted in statutory law. [K.S.A. 19-101a]

### **Purpose**

The advisory election must be for a public purpose and not an unauthorized delegation of legislative authority. [AGO 83-177] Generally, they are called by local governing bodies to elicit the opinions of voters to guide the governing body in consideration of a pending action.

### **Disorderly election conduct**

The crime of disorderly election conduct, defined in K.S.A. 25-2413, includes:

- (1) willfully conducting an advisory election,
- (2) within 250 feet of the entrance of a polling place during the hours the polls are open on election day,
- (3) UNLESS the advisory election is specifically authorized by law or home rule power AND conducted by the county election officer.

### **County Election Officer's Role**

County election officers are only empowered to conduct elections that are authorized by statute. Governing bodies that authorize an advisory election cannot require CEOs to

conduct the election. A CEO has discretion in deciding whether to conduct an advisory election for the governing body.

### **Voter Registration Database**

The conduct of advisory elections has implications for the statewide voter registration database. The CEO should conduct an advisory election in the test database rather than the production database; otherwise voting credit would be posted on voters' official registration records.

### **Timed with Regular Election**

Although an advisory election authorized by law or home rule power and conducted by the county election officer can be held at the same time as a regular election, separate polling places and ballots must be maintained and election judges and clerks may not distribute, collect or count ballots for an advisory election. [AGO 94-106]

County election officers who receive requests for advisory elections are advised to contact the Secretary of State for the latest information on the legal status of advisory elections and for procedures to use in conducting the elections.

## **b. Preparing for an Election**

The county election officer conducts nearly all official elections; that is, any elections authorized by law. There are a few types of elections that are conducted by local governmental units. Also, it should be said that the county election officer conducts *only* official elections, with the possible exception of the advisory election. In some circumstances the county election officer may conduct advisory elections or assist governmental units in conducting them. (See previous section.)

In preparing for any election, the specific statutes authorizing and governing the election should be reviewed and followed. However, the specific statutes governing a particular election might not answer all procedural questions. There is a general process to go through in preparing for an election that is applicable to nearly all types of elections.

### **1. Alternative Languages**

Some counties are required to provide voting materials in languages other than English. The county election officers in such counties must keep this factor in mind throughout the preparations for each election. Providing materials in alternative languages is optional for other counties.

#### **(a) Which counties?**

According to the 2010 census, four counties are currently included: Finney, Ford, Grant and Seward counties are required to produce voting materials in Spanish.

#### **(b) What are the criteria?**

According to Section 203 of the Voting Rights Act of 1965, a jurisdiction is required to produce alternative language voting materials if, based on federal census information, it meets one of the following criteria: (1) more than 5% of the voting age citizens are members of a single-language minority group who do not speak or understand English adequately to participate in the electoral process, or (2) the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have completed the fifth grade. (Completion of the fifth grade is the benchmark for literacy.)

The U.S. Department of Justice uses the census data to identify the jurisdictions that meet the criteria and publishes a list of those jurisdictions in a federal regulation. The Justice Department also notifies the jurisdictions and the chief state election officer by letter.

#### **(c) What languages?**

Currently, only Spanish is required anywhere in Kansas. In other areas of the United States, jurisdictions provide assistance in Chinese, Vietnamese, Japanese, Korean, various American Indian dialects (Pueblo, Sioux, Navajo, Apache, Chickasaw, Tohono O'odham, Yaqui, Yuiman, Ute, Seminole Paiute, Shoshone and Choctaw), various dialects spoken in Alaska (Aleut, Eskimo and Athabaskan), and Filipino (Tagalog).

**(d) What is required?**

Alternative language assistance is in the form of printed materials and oral language assistance. Community outreach and public relations programs must be conducted to notify the public of the assistance available and to identify translators and poll workers.

Printed materials include ballots, voter instructions, voter registration application forms, ballot application forms, Voter's Rights and Responsibilities posters, voter outreach materials, newspaper publications, candidate filing forms, petitions, confirmation notices, and notices of disposition. Other materials are added as they become available.

Oral language assistance includes interpreters at polling places, interpreters in the election office to process voter registration and ballot applications and other materials, and language assistance at voter registration agencies.

**(e) What resources are available?**

The Secretary of State coordinates with the Kansas Hispanic and Latino American Affairs Commission to translate most printed materials into Spanish. The Commission can assist the county election officer in recruiting interpreters, poll workers and local translators and can provide training in election procedures and sensitivity training. The Commission's office in Topeka may be reached at (785) 296-3465.

The county election officer may find the local media to be of assistance in publicizing the program.

Local Hispanic groups, colleges, churches and civic organizations may be contacted to assist in recruiting poll workers and translators.

The U.S. Department of Justice has enforcement authority and offers guidance to the state and localities on the scope of the requirements and acceptable methods of addressing the needs of the non-English proficient voting public.

The Secretary of State offers the Spanish voting materials to any county election officer who wishes to use them.

## **2. Calendar**

Once the date of the election has been set, it is helpful to build a calendar backward from that date. All the important dates should be entered on the calendar so that it becomes the road map for conducting the election. Working backward in time from the date of the election, four events provide the key dates around which the calendar is built: voter registration deadline, the beginning of advance voting, ballot preparation, and the date of publication of notice of the election.

The Secretary of State prepares a calendar for national/state/county/township elections and distributes it to county election officers during the fall of the year preceding the election. The SOS also prepares a calendar for city and school elections held in odd-numbered years. Each county election officer must prepare his/her own calendar for special elections, also referred to as question submitted elections. (See Section II a 4.)

### 3. Publications

There are several types of publications that may need to be printed in local newspapers before an election. The major types are:

(a) Notice of election--Public notice of an election is nearly always given by publication in a newspaper in the jurisdiction affected by the election. The dates and frequency of the publication are often contained in the specific statutes governing the election, but if not, K.S.A. 25-105 contains general rules for all regularly scheduled general elections and special question submitted elections.

In some elections, the laws governing the elections specify which newspaper the notices should be published in. For instance, the law might specify that the notice should be published in the official newspaper of the jurisdiction in which the election is to be held. If it is not specified, or if the requirement is simply to publish in a “newspaper of general circulation,” the county election officer decides which paper in which to publish. However, many election officers choose to use the official newspaper, which is designated by the governing body of the jurisdiction. The designation of “official” might be rotated to different newspapers each year.

The format of publications is usually not specified in law. Often county election officers adapt previously-published notices to fit the current situation and submit the publication to the newspapers.

(b) Notice of close of registration--Voter registration is always closed for the 20 days leading up to an election and on election day. The county election officer must publish notice of the close of registration by the tenth day before registration closes. The format of this publication is contained in an administrative regulation. [KSA 25-2310, KAR 7-23-4] The Secretary of State sends an official notice of the close of registration to each county election officer prior to the 60<sup>th</sup> day before any primary or general election. Receipt of the notice constitutes a directive for the county election officer to publish the notice according to the regulation. [KSA 25-2311(c)]

(c) Division of township into precincts--If a county election officer divides a township into one or more precincts, a publication must be made once each week for three consecutive weeks to notify the voting public of the change.

Occasionally a county election officer will reassign voters in a given precinct to a different polling place. No publication is required by law, but because changing polling places can be confusing to voters, some county election officers choose to publish a notice, and some also mail a notice to each affected voter in addition to making the publication. [KSA 25-2702]

Note: A separate statute directs county election commissioners (not election officers who are county clerks) to publish changes of ward and precinct boundaries once at least 30 days before any election. [KSA 19-3426]

The following chart contains general provisions for legal publications for elections.

## Legal Publications Schedule

### Even-Numbered Years

#### Primary Election

Notice of primary	KSA 25-204	After April 2, once weekly for three weeks in the official county paper
Registration closing	KSA 25-2310 KAR 7-23-4	In June or July, once at least 10 days before registration books close, in a paper having general circulation
Candidates	KSA 25-209	In June and July, after receiving names from SOS, publish 3 consecutive weeks in the official paper

#### General Election

Notice of election	KSA 25-105	In October, once at least 15 days before election in a paper having circulation in county
Registration closing	KSA 25-2310 KAR 7-23-4	In September or October, once at least 10 days before registration books close, in a paper having general circulation

### Odd-Numbered Years

#### Primary Election

Notice of city primary	KSA 25-2112	(not required)
School election	KSA 25-2018(b)	On or before January 15, once in a paper having general circulation
Registration closing	KSA 25-2310 KAR 7-23-4	In January or February, once at least 10 days before registration books close, in a paper having general circulation
Notice of school primary	KSA 25-2018(d)	In February, once 6 weeks before first Tuesday in April, in a paper having general circulation

**General Election**

Notice of city general	KSA 25-2112	(not required)
Registration closing	KSA 25-2310 KAR 7-23-4	In early March, once at least 10 days before registration books close, in a paper having general circulation
Notice of school general	KSA 25-2018(e)	In late March/early April, once at least 3 days before first Tuesday in April, in a paper having general circulation

**Other Publications**

**Special Elections**

Notice of election	KSA 25-105	Once, at least 10 days before election, in a paper having circulation in the county. Includes notice of voting areas and polling places if not already published.
Notice of bond election	KSA 10-120	Once a week for 2 consecutive weeks, the first at least 21 days before the election, in a paper having general circulation
Special school election	KSA 25-2018(f)	Same as bond election in KSA 10-120

**Voting Equipment Test**

Notice of equipment test	KSA 25-4410(b) KSA 25-4411(b)	In counties using voting equipment, once at least 48 hours before test, in a paper having general circulation
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**City Annexations**

Notice of annexation	KSA 12-523	When annexation is effective. Must be at least 30 days before election to be effective that election. (Published by city.)
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### **Division of Township into Precincts**

Declaration of precinct change	KSA 25-2702	Once each week for 3 consecutive weeks, beginning 90 days before election, in a paper having general circulation in township
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### **Change of Ward and Precinct Boundaries**

Proclamation of ward and precinct boundary changes	KSA 19-3426	Once at least 30 days before any election, in the official county paper (election commissioners only)
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## **4. Printing Ballots**

The county election officer chooses a printer to prepare ballots. Some use a local newspaper or other publisher, some use a vendor that supplies voting equipment and election supplies, and some that use hand-counted paper ballots print their own ballots on computer printers and photocopy them as needed. Also, some counties use ballot on demand printers, especially for in-person advance voting. Ballot on demand printers allow the correct ballot to be printed for each voter as needed, which reduces waste and simplifies the process of accounting for the number of ballots produced.

In candidate elections, ballot preparation begins as soon as possible after the candidate filing deadline has passed and the required period for determining the validity of filings has elapsed. The main factor in the timing of ballot preparation is the beginning of advance voting, which occurs twenty days before the election. The county election officer must receive ballots from the printer at least five days before the election to allow time for inspection by candidates and their agents. [KSA 25-604(c)] As a practical matter, though, the ballots must be printed before the beginning of advance voting twenty days before the election. The format for advance voting ballots and regular ballots is the same. A general rule is to allow at least three weeks for ballot preparation. The deadline for distribution of federal services ballots, 45 days before the election, sometimes requires a separate ballot prepared on a computer and photocopied as needed. County election officers must comply with the 45-day deadline, so the creation of a paper ballot is directed if ballots are not ready by the deadline. (See Section II c 3.) [KSA 25-1220]

#### **(a) Write-in lines**

Write-in lines are required to be printed on ballots for each race *except* in:

- the presidential preference primary,
- national/state/county/township primaries where 1 or more candidates are on the ballot,
- city/school/community college primaries, and
- question submitted elections.

**Note:**

An exception to these rules for write-in lines is the election of precinct committee persons in the Democratic and Republican parties at state primary elections. Write-in lines are always included for these positions because they are *elected* at the primary, not nominated.

When write-in lines are required, the number of lines equals the number of positions being elected or nominated.

[KSA 25-213, 25-2021(d), 25-2116, 25-4503, 71-1415]

**Ballots for the Presidential Preference Primary**

There is a special law providing for the printing of ballots by the Secretary of State in the presidential preference primary. In the PPP, the Secretary of State is authorized, but not required, to print ballots for the counties as a cost-saving measure. In 1992, the last time a PPP was held in Kansas, the Secretary of State asked which counties wanted to have their ballots printed by the state. Approximately two-thirds did; many who printed their own ballots did so because they had special questions to print on their ballots, and the state was unable to accommodate their special printing needs. If they printed their own ballots, the printing costs were reimbursed by the state the same as other direct costs of the PPP.

(For more on the PPP, see Section II a 5.)

**(b) Ballot Rotation**

Kansas is one of the states that require ballot rotation. This is an important consideration in ballot preparation because of the additional cost and complexity. The fundamental rule of rotation is that each candidate's name must appear at the top of the list of candidates for that office on an equal number of ballots throughout the election district. This requirement is based on the assumption that there is an advantage to having one's name appear at the top of the list. The assumption is that voters are more likely to vote for the first name listed than for names farther down the list, and rotation equalizes opportunities among the candidates.

Rotation produces many different ballot styles, each of which causes a different setup by the printer. [KSA 25-212, 25-610]

**(1) Rotation by the Secretary of State**

For each of the statewide federal offices, statewide state offices, congressional, state legislative, state board of education and some judicial offices, the Secretary of State rotates the candidates' names using *entire counties* as the building blocks according to the following procedure:

- List the counties in the district in alphabetical order.
- Include the number of registered voters in each county beside the county's name. In primary elections, list the number of registered Democrats or Republicans, as the case may be, for each party's rotation schedule.
- Group the counties into as many segments as there are candidates. Each group of counties must have approximately the same number of registered voters as the others. The policy of the Secretary of State is to allow no more than a 0.5% deviation from the ideal number.

- If an equitable breakdown cannot be made because of disparities in the number of registered voters (or party affiliates, in the case of a primary), the Secretary of State issues an “order to rotate” to the counties involved. The counties then rotate the names on a precinct basis.

**Note:**

Counties using DRE voting systems must rotate by precinct regardless of the Secretary of State’s rotation.

**(2) Rotation by the County Election Officer**

For each local office except precinct committee positions, and for each state or national office for which the Secretary of State has issued an order to rotate, the county election officer rotates the candidates’ names using *entire precincts* as the building blocks according to the following procedure:

- List the precincts in the district in alphabetical or numerical order.
- Include the number of registered voters in each precinct beside the precinct’s name. In primary elections, list the number of registered Democrats or Republicans, as the case may be, for each party’s rotation schedule.
- Group the precincts into as many segments as there are candidates. Each group of precincts must have approximately the same number of registered voters as the others.
- If an equitable breakdown cannot be made because of disparities in the number of registered voters (or party affiliates, in the case of a primary), some county election officers choose to adjust the order of precincts to achieve a more equitable breakdown. However, others do not adjust the order of precincts. Their ballots are rotated with the most equal distribution possible using the precincts listed in the regular alphabetical or numerical order.

**Note:**

County election officers design their own rotation schemes for 1<sup>st</sup> and 2<sup>nd</sup> class city elections. Due to the irregular shape of many school districts and the member districts within school districts and community college districts, precincts are not required to be used for rotation in school and community college elections. [KSA 25-2014, 71-1417]

Ballots for 3<sup>rd</sup> class city elections are not required to be rotated. [KSA 25-2115]

**5. Advance Voting**

Initial preparations for an election must be completed in time for advance voting to begin twenty days before the election. The two major ways to vote in advance are by mail and in person. Advance voting *by mail* must begin in every county twenty days before the election. The county election officer has the option of beginning *in-person* advance voting twenty days before the election or any time after that until the week before the election. In-person advance voting must begin in every county no later than the Tuesday before the election.

A form of in-person advance voting allowed in all counties beginning in 2008 is satellite advance voting. Previously, since 1999, satellite advance voting was authorized only in Johnson and Sedgwick counties. Under satellite advance voting, the county election officer may establish in-person advance voting sites at locations other than the county election office to make voting more convenient for voters. [KSA 25-1122(f)]  
(For more on advance voting, see Section II c 2.)

## **6. Voter Registration Deadline**

One of the important dates during the weeks leading up to the election is the voter registration deadline. This deadline occurs on the 21<sup>st</sup> day before the election. According to state law, voter registration is closed for the 20 days leading up to the election and on election day in the district where the election is to be held. Therefore, the 21<sup>st</sup> day before the election is the last day to register to vote in that election. Registration re-opens the day after the election. The county election officer must accept applications for that election if they are postmarked by the 21<sup>st</sup> day before the election, or, if the postmark is missing or illegible, they must be accepted if received by the 9<sup>th</sup> day before the election. [KSA 25-2311(e)]

Other applications for voter registration received during the closed period are not processed and no names are added to the list until after the election. [KSA 25-2309(f)] Likewise, driver's license offices and other intake points for applications will continue to collect them and forward them to the county election officer, but the applications are not valid for that election.

All county election officers must diligently forward applications and changes of address that are intended for other counties. If applications are received by the registration deadline or are postmarked by the deadline, the applicants are eligible for the upcoming election, assuming all other qualifications are met. Failure to send applications to the appropriate counties can result in denial of a person's constitutional right to vote, which is a serious matter that can be avoided with the constant and timely exchange of information.

In a partisan primary election, the voter registration deadline is also the deadline for changing one's party affiliation. If a person is registered before the deadline but not affiliated with a party, the law allows them to affiliate with a party at the polling place on election day (or when applying for an advance ballot) and vote that party's ballot. Depending on the rules adopted by the parties, unaffiliated voters may also be allowed to vote in the respective parties' primaries without affiliating. However, an affiliated voter may not *change* affiliations on primary election day. If a voter affiliates with a party on primary election day, the affiliation remains until the voter changes it by completing a new voter registration application or party affiliation card. [KSA 25-3304]  
(See also Chapter I, Section d.)

## **7. Election Boards**

The county election officer is responsible for appointing, training and equipping members of the election board in each precinct or voting area.

### **(a) Composition of Election Boards**

Each election board is usually composed of three or more members with one supervising judge, one or more judges, and the rest clerks. [KSA 25-2803] The board may be as small as two members in a precinct of fewer than fifty registered voters with a polling place more than ten miles from the nearest polling place. [KSA 25-2808(b)] The members of the board, excluding the supervising judge, are required to represent a mix of political parties, but this requirement may be relaxed if it is impossible to obtain an adequate number of board members of different political affiliations. [KSA 25-2802]

The county election officer determines “the area to be served by each voting place at every election” and may designate more than one precinct to vote at the same polling place. [KSA 25-2701(a)] In such cases, separate ballots must be maintained for each precinct. The law is unclear regarding whether one board may serve multiple precincts voting at the same polling place, but the Secretary of State recommends a separate board for each precinct to reduce the possibility of ballot distribution errors. When board workers are asked to distribute different ballot styles to different voters, the chance of errors increases. Ultimately, however, the decision whether one board may serve multiple precincts is up to the county election officer. In such cases the Secretary of State strongly recommends adoption of a system where at least one check is made to ensure each voter receives the correct ballot. For instance, if one board worker is assigned to hand the ballot to each voter, at least one other board worker checks to see that each voter received the correct ballot.

#### **Teenage Election Board Workers**

The county election officer is authorized to appoint one 16- or 17-year-old person to work on each election board. Any such teenage board workers must possess the other qualifications of being registered voters except age. It is recommended that teenage board workers be appointed based on an informal agreement between the county election officer and school officials, ensuring that the teenage volunteers are in good academic standing at school. Some schools have allowed students to receive credit on classroom projects for their work on election day. Each county decides whether or not to pay the students. [KSA 25-2804(b)]

#### **Split Shifts**

A law passed in 2007 allows the CEO the option of splitting shifts for board workers to shorten their hours worked and to make it easier to recruit poll workers. In the past some potential board workers have declined to serve because of the 14-hour work period on election day. If some board workers are allowed to work for, say, half the day, the supervising judge and at least one other board worker must be present throughout the entire day. If split shifts are used, only those board workers on duty when the polls closed are required to certify the results.

It is important, especially in partisan elections, to have at least one board member from each of the major political parties present at all times, to the extent practicable.

The Secretary of State adopted an administrative regulation, KAR 7-45-1, to govern the process of using split shifts.

**(b) Qualifications**

Election board workers must have the qualifications of electors (U.S. citizenship, eighteen years of age, residence). [KSA 25-2804(a), (b)] They must be residents of the voting areas in which they serve unless it becomes necessary for the county election officer to appoint them in another precinct due to a shortage. [KSA 25-2804(c)] In such cases they are allowed to vote advance ballots due to their absence from their precincts on election day. [KSA 25-2804(d)]

Board workers may not be candidates on the ballot in the election at which they work, except at the national/state/county/township primary they may be candidates for precinct committeemen and committeewomen of their parties. [KSA 25-2804(b)] They are not prohibited from serving on the board if their spouse, family member or other relative is a candidate on the ballot.

**(c) Pay**

Pay of election judges and clerks is set by a resolution adopted by the board of county commissioners. It may not be less than \$40 per day in counties using voting machines nor less than \$3 per hour in counties not using machines. Most counties pay at least the federal minimum wage. Supervising judges are entitled to receive additional pay, and they receive mileage expenses at the state rate. [KSA 25-2811(c), KSA 75-3203a]

Through a combination of federal and state laws, the first \$1,000 of each election board worker's pay each year is exempt from withholding for unemployment compensation, workers compensation, FICA and federal income tax. Annual wages up to \$1,300 are not required to be reported to the Internal Revenue Service.

**Poll Workers and I-9 Forms**

In most counties poll workers are considered temporary, intermittent county employees. Because they are county employees, they are appointed and processed much the same as other employees, including completion of all the standard paperwork. However, the Internal Revenue Service ruled in 1988 that poll workers are not required to have I-9 forms on file. The I-9 is required by the Immigration Reform and Control Act of 1986 to verify that a prospective employee is a U.S. citizen or lawfully present in the U.S. Because poll workers are registered voters and thus are sworn to be U.S. citizens, the IRS made the 1988 ruling exempting them from the filing of I-9 forms.

**(d) Recruitment and Appointment of Election Boards**

County chairs of the two major political parties are directed by law to furnish names of board workers to the county election officer. The county election officer is required to appoint these nominees to the election boards in their respective precincts of residence, "if such persons can qualify and if such recommendations are timely." [KSA 25-2803]

In case the number of recommendations from the county party chairs is insufficient to fill all the positions, or if one or more of the recommendations is unqualified or incapable of performing the duties required, the county election officer maintains a pool of trained board workers for appointment as needed. [KSA 25-2804(c)]

According to law, election board workers are to be appointed at least ten days before the election, but often withdrawals and additions occur until election day. Before assuming their duties, they are required to take an oath or affirmation on Form EO, prescribed by

the Secretary of State. Oaths/affirmations are filed with the county election officer. [KSA 25-2807]

### **Screening Felon Board Workers**

Election board workers often work in situations at schools, churches, senior centers and other facilities where they are surrounded by vulnerable people including the elderly and young children. Also, many schools in recent years have adopted security policies that restrict who may enter school buildings. Such policies may affect the ability of CEOs to use schools for polling places.

The SOS recommends CEOs adopt simple procedures to prevent situations that are dangerous or that may expose the electoral process to criticism. Three procedures are suggested.

1. **Employment Application**—Use an application form for board workers which asks if the applicant has ever been convicted of a crime that is incompatible with the duties of an election board worker. Individuals currently under felony convictions are ineligible to register to vote and thus are not in the pool of board workers, but if their sentences have been served they may be registered voters. The CEO should review the applications on a case-by-case basis to determine if any information is disclosed that would prevent the person from being appointed as a poll worker or that would affect the polling place to which the person is assigned. A blanket rejection of anyone with a criminal conviction is not recommended because applying such a litmus test could lead to a violation of Title VII of the Civil Rights Act, which prohibits the use of criminal information as the one determining factor in awarding employment. Also, some felonies might not be relevant to board worker duties, such as DUIs. On the other hand, theft and battery or sexual battery are not felonies and such crimes may be relevant.

2. **Sex offender registry**—Use information supplied by the SOS resulting from a comparison of board workers against the KBI sex offender registry. The SOS will conduct a comparison before each election cycle and provide the information to each CEO. The ELVIS voter registration system already checks voter registration applications against the current felon list.

3. **Security policies**—Work with administrators of schools and other facilities used as polling places to become aware of their security requirements and make sure your procedures abide by their policies. Try to make county election procedures and policies compatible.

### **(e) Training Election Boards**

County election officers are required by state law to provide instruction for election board workers. The county election officer may “provide instruction” by handing supervising judges and clerks printed materials, or by conducting classroom-style training sessions. The nature of the training is up to the county election officer, as well as such questions as whether to pay election workers for the hours spent in training, whether the training of supervising judges is different than the training of clerks, and other issues.

The Help America Vote Act of 2002 (HAVA) creates large-scale changes in the training of election board workers, including state guidelines for training, the providing of training materials, and requirements as to the number of hours board workers spend in training. The training focuses on new laws governing the election process, voting equipment, ballots, and prescribed procedures for the voting place. [KSA 25-2806]

The Secretary of State is directed by law to provide county election officers with information as to the form and content of instructions to election boards. The training curriculum is contained in a notebook titled “County Election Officer Training Manual.” The notebook also contains the election board worker curriculum designed by the Secretary of State. County election officers use the curriculum as the basis for their training programs for election board workers.

Each county election officer should provide written instructions, usually in the form of a manual, to each election board. The instructions can be used as a reference when board workers are faced with an unusual situation or if they simply cannot remember the instructions given at the training session. One of the central points to cover in written instructions is the handling of ballots. [Post Audit Report 93PA34]

**(f) Authority of Election Boards**

Election boards are required to comply with all statutes and regulations governing the voting procedure. At the same time, they are required to *enforce* the rules for voting in their polling place and within a 250-foot radius of the entrance. The county election officer and the supervising judge have control over the polling place and may restrict activities if they hinder or impede the voting process. This may include activities of authorized poll agents, members of the press, exit pollsters, candidates, or voters not immediately involved in the act of voting. In setting the rules for the polling place, the main concern is to preserve the ability of voters to receive their ballots and cast them in secrecy. To that end, they must prevent unauthorized access to ballots and prevent electioneering. [KSA 25-2810]

**(g) Accessibility for Election Board Workers with Disabilities**

Election board workers with disabilities must be provided accessible facilities according to their needs, including rest rooms. They may be assigned to polling places in precincts other than where they live if needed.

**8. Testing Voting Equipment**

If a county uses voting equipment, it is required that the equipment be tested using a prepared stack of test ballots in a public meeting before the election. In Kansas, the term “voting equipment” means optical scan systems or electronic voting machines. (See Chapter VI, Voting Systems.) The test is to occur “within five days prior to the election,” and a notice of the test is to be published in the newspaper at least 48 hours before the test. Also, the same test is required to be conducted after the canvass. [KSA 25-4411(b), 25-4610(b)]

**9. Supplies for Polling Places**

The county election officer is responsible for equipping and supplying each polling place. This includes furnishing a reasonably comfortable, lighted space with private voting booths, ballot boxes, and tables and chairs as needed. If voting machines are used, they are delivered to the polling places during the days preceding the election. The day before the election, supervising judges pick up their other materials from the county election office, including ballots, ballot sacks, marking pens or pencils, poll books listing the

names of all registered voters eligible to vote at that polling place, challenged/provisional ballot envelopes, and a supply of voter registration application forms for provisional voting. Other materials that may be included but which are not required are U.S. and Kansas flags, “I Voted” lapel stickers, and telephones. [KSA 25-2703, 25-2707]

Each polling place is supplied with sample ballots and Voter’s Rights and Responsibilities posters to be displayed on the wall of the polling place during voting hours.

The supplies and equipment provided to a given polling place often include products such as signs, parking cones and ramps to make the site fully accessible according to the Americans with Disabilities Act. See “Polling Place Accessibility” below.

### **Concealed Weapons**

A 2013 law called the Personal and Family Protection Act allows concealed carry of weapons in certain public places by individuals with concealed carry permits. A municipal building cannot prohibit concealed carry unless it has “adequate security measures,” meaning electronic metal detection equipment and personnel at public entrances to detect and restrict the carrying of weapons into the building. If the facility does not have adequate security measures, weapons cannot be restricted and any signage prohibiting weapons must be removed. The Act applies to facilities owned or leased by local governments, including sites used as polling places.

The Secretary of State requested an Attorney General opinion to determine the scope of the Act as it relates to polling places. County election officers should assess the facilities they use as polling places and consult their county counselors with regard to the applicability of the Act, keeping in mind the following points from Attorney General Opinion 2013-20:

- Except as described herein, the use of real property as a polling place does not transform the nature of that property for the purposes of the PFPA. Any concealed carry requirements that applied to that property immediately before its temporary use as a polling place continue to apply during its use as a polling place and thereafter.
- The Personal and Family Protection Act (PFPA) authorizes concealed carry licensees to carry a concealed handgun into a polling place to the extent that concealed handguns are permitted to be carried into the building in which the polling place is located.
- The provisions of K.S.A. 2013 Supp. 75-7c20 apply only to buildings that are owned or leased in their entirety by the state or a municipality. If the PFPA requires concealed carry to be permitted in a state or municipal building, then concealed carry licensees must be permitted to carry a concealed handgun in *all* parts of the building, including areas used as polling places, with the exception of courtrooms, ancillary courtrooms, and secure areas of correctional facilities, jails and law enforcement agencies.
- The governing body or chief administrative officer, if no governing body exists, of a state or municipal building may exempt the building from the provisions of K.S.A. 2013 Supp. 75-7c20 for a set period of time. If a state or municipal

- building is so exempted, concealed carry may be prohibited by posting the building in accordance with K.S.A. 2013 Supp. 75-7c10.
- If the governing body or chief administrative officer of a state or municipal building does not exempt a building from the provisions of K.S.A. 2013 Supp. 75-7c20, then concealed carry licensees must be permitted to carry a concealed handgun inside the building unless adequate security measures are provided and the building is posted as prohibiting concealed carry.
  - Concealed carry is not required to be permitted in a polling place located inside a privately-owned building unless the county has leased the entire privately-owned building.
  - Concealed carry is not required to be permitted in polling places located inside public school district buildings because a public school district is not a municipality for the purposes of the PFFA.
  - An equal protection claim against a county based upon the varying ability of concealed carry licensees to carry a concealed handgun into a polling place would be subject to the rational basis test.

## **10. Emergencies**

Part of the preparation for any election should be the development of emergency procedures. The term “emergency” as used here means any event or situation that disrupts, or threatens to disrupt, the normal voting procedure on election day or during advance voting. Emergencies might include fires, floods, tornadoes, loss of electrical power, equipment malfunction, loss of ballots or other election supplies, misprinted ballots, bomb scares or terrorist acts, failure of election boards to report for duty, or disruptions by voters or poll agents.

The principal goal of any emergency voting plan is to allow each registered voter qualified to vote at that election an opportunity to vote the correct ballot during regular voting hours.

Neither the Secretary of State nor the county election officer has the authority to cancel an election or postpone it until a later date in the event of an emergency. A court might order a new election if a contest is filed and the court determines that voters were not given a reasonable opportunity to vote or that the results of the election are incomplete or invalid for some reason.

However, a law passed in 2000 states: “The secretary of state may designate temporary alternative methods for the distribution of ballots in cases of war, natural or man-made disasters, equipment failures or other emergency conditions or circumstances which make it impossible for voters in a voting area to obtain ballots as provided by law.” [KSA 25-622] Emergencies might require the county election officer to coordinate with various other entities, including local law enforcement agencies and state agencies that have authority in emergencies. For instance, in 1998 many counties in the eastern part of Kansas experienced flooding that made normal ballot distribution impossible in certain areas. Some polling places were isolated by rising waters, while voters in some areas were unable to leave home to vote. County election officers in several counties contacted the Secretary of State, and a plan was devised to deliver ballots to voting places using emergency vehicles, including boats, and in some cases to take voters to the polling

places. In such cases the Secretary of State may request the Governor to declare an emergency and direct the National Guard to assist in the election, although this is rare. Usually the situation is handled by local officials such as the sheriff or other law enforcement personnel acting at the direction of the county attorney in coordination with the county election officer.

An emergency plan should include the following items:

1. Identify the specific precincts or voting areas affected by the emergency, and the number of voters affected.
2. Determine the proposed action that would be most effective in responding to the emergency, such as alternative transportation, moving polling places, alteration of ballots, contacting voters, or issuing special instructions to precinct election board workers.
3. Contact the Secretary of State's office at 785-296-4561 to discuss the emergency and a plan of action.
4. Notify voters and the public at large as quickly as possible. Request the assistance of local media outlets, especially radio stations, to distribute information about how voting procedures are being altered.
5. If necessary, post notices at polling places of the changes in voting procedures. Election officers should notify election board workers, especially supervising judges, as quickly as possible. They might consider contacting individual voters if the number is small enough.
6. Implement the alternative voting plan quickly within normal voting hours if possible. Respond to inquiries from the media and voters as quickly and factually as possible.
7. At the county canvass, inform the board of canvassers and the county attorney/counselor of the nature of the emergency and the actions taken. If needed, update the Secretary of State on the impact the emergency had on the election.

## **11. Polling Place Accessibility**

Polling places are required to be accessible to all voters, including voters with disabilities. Accessibility should be viewed from two perspectives: access to the physical structure of the polling place, and access to the ballot or voting equipment. KSA 25-2710 establishes standards of accessibility, and because they are public accommodations, polling places also must meet the requirements of the federal Americans with Disabilities Act (ADA). This includes ramps and handrails, voting booths at wheelchair height, and doorways wide enough for wheelchairs.

Temporary accommodations may be used to make polling places accessible for election day. The equipment may include portable ramps, thresholds, rubber cones for parking spaces, parking signs, doorbells and doorstops. These accessibility products become part of the regular supplies and equipment furnished for a given polling place each election.

[KSA 25-2710(b)]

Guidelines for assessing compliance of existing facilities with the ADA are provided by the National Institute on Disability and Rehabilitation Research. The guidelines and a helpful checklist, called "The Americans with Disabilities Act Checklist for Readily

Achievable Barrier Removal,” is available by calling 1-800-949-4ADA. The checklist questions are reproduced in the following chart in a condensed format.

**1. Accessible Approach/Entrance**

People with disabilities should be able to arrive on the site, approach the building, and enter as freely as everyone else. At least one route of travel should be safe and accessible for everyone, including people with disabilities.

<b>Route of Travel</b>	
Is there a route of travel that does not require the use of stairs?	
Is the route of travel stable, firm and slip-resistant?	
Is the route at least 36 inches wide?	
Can all objects protruding into the circulation paths be detected by a person with a visual disability using a cane? <b>In order to be detected</b> using a cane, an object must be within 27 inches of the ground. Objects hanging or mounted overhead must be higher than 80 inches to provide clear head room. It is not necessary to remove objects that protrude less than 4 inches from the wall.	
Do curbs on the route have curb cuts at drives, parking, and drop-offs?	
<b>Ramps</b>	
Are the slopes of ramps no greater than 1:12? <b>Slope is given as a ratio of the height to the length.</b> 1:12 means for every 12 inches along the base of the ramp, the height increases one inch. For a 1:12 maximum slope, <b>at least</b> one foot of ramp length is needed for each inch of height.	
Do all ramps longer than 6 feet have railings on both sides?	
Are railings sturdy, and between 34 and 38 inches high?	
Is the width between railings or curbs at least 36 inches?	
Are ramps non-slip?	
Is there a 5-foot-long level landing at every 30-foot horizontal length of ramp, at the top and bottom of ramps and at switchbacks?	
Does the ramp rise no more than 30 inches between landings?	
<b>Parking and Drop-Off Areas</b>	
Are an adequate number of accessible parking spaces available (8 feet wide for car plus 5-foot access aisle)? For guidance in determining the appropriate number to designate, the table below gives the ADAAG requirements for new construction and alterations (for lots with more than 100 spaces, refer to ADAAG):	
<b>Total Spaces      Accessible</b>	
1 to 25              1 space	
26 to 50            2 spaces	
51 to 75            3 spaces	
76 to 100          4 spaces	
Are 8-foot-wide spaces, with minimum 8-foot-wide access aisles, and 98 inches of vertical clearance, available for lift-equipped vans? <b>At least one of every 8 accessible spaces</b> must be van-accessible (with a minimum of one van-accessible space in all cases).	
Are the access aisles parts of the accessible route to the accessible entrance?	
Are the accessible spaces closest to the accessible entrance?	
Are accessible spaces marked with the International Symbol of Accessibility? Are there signs reading “Van Accessible” at van spaces?	
Is there an enforcement procedure to ensure that accessible parking is used only by those who need it?	
<b>Entrance</b>	
If there are stairs at the main entrance, is there also a ramp or lift, or is there an alternative accessible entrance? <b>Do not use a service entrance as the accessible entrance</b> unless there is no other option.	
Do all inaccessible entrances have signs indicating the location of the nearest accessible entrance?	
Can the alternate accessible entrance be used independently?	
Does the entrance door have at least 32 inches clear opening (for a double door, at least one 32-inch leaf)?	
Is there at least 18 inches of clear wall space on the pull side of the door, next to the handle? <b>A person using a wheelchair</b> or crutches needs this space to get close enough to open the door.	
Is the threshold edge ¼-inch high or less, or if beveled edge, no more than ¾-inch high?	
If provided, are carpeting or mats a maximum of ½-inch high?	
Are edges securely installed to minimize tripping hazards?	
Is the door handle no higher than 48 inches and operable with a closed fist? <b>The “closed fist” test for handles and controls:</b> Try opening the door or operating the control using only one hand, held in a fist. If you can do it, so can a person who has limited use of his/her hands.	

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Can doors be opened without too much force (exterior doors reserved; maximum is 5 lbf for <i>interior</i> doors)? <b>You can use an inexpensive force meter or a fish scale</b> to measure the force required to open a door. Attach the hook end to the doorknob or handle. Pull on the ring end until the door opens, and read off the amount of force required. If you do not have a force meter or a fish scale, you will need to judge subjectively whether the door is easy enough to open.	
If the door has a closer, does it take at least 3 seconds to close?	
<b>2. Access to Goods and Services</b> Ideally, the layout of the building should allow people with disabilities to obtain materials or services without assistance.	
<b>Horizontal Circulation</b> Does the accessible entrance provide direct access to the main floor, lobby, or elevator?	
Are all public spaces on an accessible route of travel?	
Is the accessible route to all public spaces at least 36 inches wide?	
Is there a 5-foot circle or a T-shaped space for a person using a wheelchair to reverse direction?	
<b>Doors</b> Do doors into public spaces have at least a 32-inch clear-opening?	
On the pull side of doors, next to the handle, is there at least 18 inches of clear wall space so that a person using a wheelchair or crutches can get near to open the door?	
Can doors be opened without too much force (5lbf maximum for interior doors)?	
Are door handles 48 inches high or less and operable with a closed fist?	
Are all threshold edges ¼-inch high or less, or if beveled edge, no more than ¾-inch high?	
<b>Rooms and Spaces</b> Are all aisles and pathways to materials and services at least 36 inches wide?	
Is there a 5-foot circle or T-shaped space for turning a wheelchair completely?	
Is carpeting low-pile, tightly woven, and securely attached along edges?	
In circulation paths through public areas, are all obstacles cane-detectable (located within 27 inches of the floor or higher than 80 inches, or protruding less than 4 inches from the wall)?	
<b>Emergency Egress</b> If emergency systems are provided, do they have both flashing lights and audible signals?	
<b>Signage for Goods and Services</b> Different requirements apply to different types of signs. If provided, do signs and room numbers designating permanent rooms and spaces where goods and services are provided comply with the appropriate requirements for such signage? <ul style="list-style-type: none"> <li>• Signs mounted with centerline 60 inches from floor.</li> <li>• Mounted on wall adjacent to latch side of door, or as close as possible.</li> <li>• Raised characters, sized between 5/8 and 2 inches high, with high contrast (for room numbers, rest rooms, exits).</li> <li>• Brailled text of the same information.</li> <li>• If pictogram is used, it must be accompanied by raised characters and Braille.</li> </ul>	
<b>Directional and Informational Signage</b> The following questions apply to directional and informational signs that fall under Priority 2. If mounted above 80 inches, do they have letters at least 3 inches high, with high contrast, and non-glare finish?	
Do directional and informational signs comply with legibility requirements? (Building directories or temporary signs need not comply.)	
<b>Controls</b> Are all controls that are available for use by the public (including electrical, mechanical, cabinet, game, and self-service controls) located at an accessible height? <b>Reach ranges:</b> The maximum height for a side reach is 54 inches, for a forward reach 48 inches. The minimum reachable height is 15 inches for a front approach and 9 inches for a side approach.	
Are they operable with a closed fist?	
<b>Seats, Tables, and Counters</b> Are the aisles between fixed seating (other than assembly area seating) at least 36 inches wide?	
Are the spaces for wheelchair seating distributed throughout?	
Are the tops of tables or counters between 28 and 34 inches high?	
Are knee spaces at accessible tables at least 27 inches high, 30 inches wide, and 19 inches deep?	
At each type of cashier counter, is there a portion of the main counter that is no more than 36 inches high?	
Is there a portion of food-ordering counters that is no more than 36 inches high, or is there space at the side for passing items to customers who have difficulty reaching over a high counter?	
<b>Vertical Circulation</b> Are there ramps, lifts, or elevators to all public levels?	
On each level, if there are stairs between the entrance and/or elevator and essential public areas, is there an accessible alternate route?	
<b>Stairs</b> The following questions apply to stairs connecting levels <i>not</i> serviced by an elevator, ramp, or lift. Do treads have a non-slip surface?	
Do stairs have continuous rails on both sides, with extensions beyond the top and bottom stairs?	
<b>Elevators</b> Are there both visible and verbal or audible door opening/closing and floor indicators (one tone = up, two tones =	

down)?	
Are the call buttons in the hallway no higher than 42 inches?	
Do the controls inside the cab have raised and Braille lettering?	
Is there a sign on both door jambs at every floor identifying the floor in raised and Braille letters?	
If an emergency intercom is provided, is it usable without voice communication?	
Is the emergency intercom identified by Braille and raised letters?	
<b>Lifts</b>	
Can the lift be used without assistance? If not, is a call button provided?	
Is there at least 30 by 48 inches of clear space for a person in a wheelchair to approach to reach the controls and use the lift?	
Are controls between 15 and 48 inches high (up to 54 inches if a side approach is possible)?	

**Note:** If rest rooms, drinking fountains and telephones are not provided at the polling place for use by the voting public, they are not required to be accessible according to ADA guidelines. If, however, such facilities are provided at the polling place, they must be accessible. In such cases the following checklist may be used to determine if they meet ADA guidelines.

**3. Usability of Rest Rooms**

When rest rooms are open to the public, they should be accessible to people with disabilities.

<b>Getting to the Rest Room</b>	
If rest rooms are available to the public, is at least one rest room (either one for each sex, or unisex) fully accessible?	
Are there signs at inaccessible rest rooms that give directions to accessible ones?	
<b>Doorways and Passages</b>	
Is there tactile signage identifying rest rooms? <b>Mount signs on the wall</b> , on the latch side of the door, complying with the requirements for permanent signage. Avoid using ambiguous symbols in place of text to identify rest rooms.	
Are pictograms or symbols used to identify rest rooms, and, if used, are raised characters and Braille included below them?	
Is the doorway at least 32 inches clear?	
Are doors equipped with accessible handles (operable with a closed fist), 48 inches high or less?	
Can doors be opened easily (5lbf maximum force)?	
Does the entry configuration provide adequate maneuvering space for a person using a wheelchair? <b>A person in a wheelchair</b> needs 36 inches of clear width for forward movement, and a 5-foot diameter or T-shaped clear space to make turns. A minimum distance of 48 inches clear of the door swing is needed between the two doors of an entry vestibule.	
Is there a 36-inch-wide path to all fixtures?	
<b>Stalls</b>	
Is the stall door operable with a closed fist, inside and out?	
Is there a wheelchair-accessible stall that has an area of at least 5 feet by 5 feet, clear of the door swing, OR is there a stall that is less accessible but that provides greater access than a typical stall (either 36 by 69 inches or 48 by 69 inches)?	
In the accessible stall, are there grab bars behind and on the side wall nearest to the toilet?	
Is the toilet seat 17 to 19 inches high?	
<b>Lavatories</b>	
Does one lavatory have a 30-inch-wide by 48-inch-deep clear space in front? <b>A maximum of 19 inches of the required depth may be under the lavatory.</b>	
Is the lavatory rim no higher than 34 inches?	
Is there at least 29 inches from the floor to the bottom of the lavatory apron (excluding pipes)?	
Can the faucet be operated with one closed fist?	
Are soap and other dispensers and hand dryers within reach ranges and usable with one closed fist?	
Is the mirror mounted with the bottom edge of the reflecting surface 40 inches high or lower?	

**4. Additional Spaces**

Note that this priority is for items not required for basic access in the first three priorities.

When amenities such as drinking fountains and public telephones are provided, they should also be accessible to people with disabilities.

<b>Drinking Fountains</b>	
Is there at least one fountain with clear floor space of at least 30 by 48 inches in front?	
Is there one fountain with its spout no higher than 36 inches from the ground, and another with a standard height spout (or a single "hi-lo" fountain)?	
Are controls mounted on the front or on the side near the front edge, and operable with one closed fist?	
Is each water fountain cane-detectable (located within 27 inches of the floor or protruding into the circulation	

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spaces less than 4 inches from the wall)?	
<b>Telephones</b> If pay or public use phones are provided, is there clear floor space of at least 30 by 48 inches in front of at least one?	
Is the highest operable part of the phone no higher than 48 inches (up to 54 inches if a side approach is possible)?	
Does the phone protrude no more than 4 inches into the circulation space?	
Does the phone have push-button controls?	
Is the phone hearing-aid compatible?	
Is the phone adapted with volume control?	
Is the phone with volume control identified with appropriate signage?	
If there are four or more public phones in the building, is one of the phones equipped with a text telephone (TT or TDD)?	
Is the location of the text telephone identified by accessible signage bearing the International TDD Symbol?	

**Legal References**

K.S.A. 25-105, 25-2710, 25-2801 through 25-2811, 25-4411, 25-4610  
 Americans with Disabilities Act Accessibility Guidelines (developed by the U.S.  
 Architectural and Transportation Barriers Compliance Board)  
 Help America Vote Act of 2002  
 Post Audit Report 93PA34

### c. Voting

#### 1. Election Day

Most voting in official elections in Kansas is done at the polling places on election day, although a small percentage of votes are cast by federal services voters (See Section II c 3.), and a significant percentage are cast through the advance voting system. The voting procedure is prescribed in law, with some variations allowed based on the type of voting system used.

#### Procedure by Voter

After entering the polling place, the voter:

1. States his/her name to the election board workers.
2. Is asked to provide his/her residence address.
3. Provides a qualifying photo identification document.
4. Signs his/her name next to the printed name in the poll book. (This process is slightly different in situations where electronic poll books are used.) [KSA 25-2908(b)]
5. Receives the ballot(s) and enters an unoccupied voting booth.
6. Marks the ballot(s), or enters votes on the machine in counties where DRE equipment is used. The voter may be limited to five minutes in the voting booth if other voters are waiting. [KSA 25-2901] If the voter tears, defaces, mismarks or in any way spoils the ballot, the voter may request a replacement ballot up to two times, for a total of no more than three ballots issued to the same voter. [KSA 25-2902]
7. Returns the voted ballot to the election board. [KSA 25-2905]

**Alternative forms of signatures**—A voter may sign the poll book by applying a mark, initials, typed or printed name, stamped signature, symbol or in any other manner if by placing the signature on the poll book the voter intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. The law also allows an election board worker to sign for a person who is unable to sign. [KSA 25-2908(b)]

Voters must refrain from all illegal activities such as electioneering, voter intimidation and disorderly election conduct. Anyone exhibiting improper or unruly behavior is subject to control exerted by the county election officer or the supervising judge and may be reported to law enforcement officials.

If a voter has been sent an advance ballot before the election but has not returned it to the election office and wishes to vote at the precinct on election day, the voter may return the advance ballot to the polling place and vote a provisional ballot. The election board voids the advance ballot. The voter should be allowed to vote a provisional ballot even if the voter fails to return the advance ballot. If the county election officer determines after the election that the voter did not vote another ballot at that election, the provisional ballot should be counted unless there is another reason for not counting it. [KSA 25-2908(c)]

A voter requiring assistance due to a disability may receive:

1. assistance from a person of the voter's choice,
2. assistance from two election board workers of different political parties,
3. ballots outside the polling place within 250 feet of the entrance or at the curb outside the polling place. [KSA 25-2909]

### **Procedure by Election Board**

After a voter enters the polling place and announces his/her name to the election board, the board members follow this procedure:

1. Ask the voter to "announce the name in a loud and distinct tone of voice." [KSA 25-2908(c)(1)]
2. Ask the voter to provide his/her residence address.
3. Ask the voter for a qualifying photographic identification document. If satisfied that the voter is the person depicted in the photo ID, write the election worker's initials in the space provided in the poll book.
4. Instruct the voter to sign the poll book. A board member or a person of the voter's choice may sign the poll book at the voter's direction for a voter who is physically unable to sign. (In situations where electronic poll books are used, signatures may be captured using an electronic signature pad.) [KSA 25-2908(b)]
5. Determine the appropriate ballot(s) and hand it to the voter (except in counties using DRE equipment).
6. If necessary, administer a challenged or provisional ballot (See Section II d).
7. Instruct the voter on how to cast the ballot, including the operation of voting equipment (if appropriate), special questions on the ballot, races and questions printed on the back of the ballot, etc. Board workers should never provide information to voters about specific candidates or inform voters about write-in candidates.
8. Direct the voter to an unoccupied voting booth.
9. Receive the marked ballot from the voter and clip the number from the corner of the ballot (in counties using hand-counted paper ballots). [KSA 25-2905]
10. Make notations on the poll book as needed for voters requiring assistance. [KSA 25-2908(b)]
11. Keep track of void, objected to, and challenged/provisional ballots.
12. Conduct the original canvass of ballots (in counties using hand-counted paper ballots).
13. Return all voted and unvoted ballots and all equipment and supplies to the county election office.

### **Photographic Identification**

The Secure and Fair Elections (SAFE ) Act passed in 2011 requires each voter to provide photo ID each time they vote.

Following are the types of valid ID documents, as long as they contain the voter's name and photograph and are not expired:

- A driver's license issued by Kansas or by another state or district of the United States

- A state identification card issued by Kansas or by another state or district of the United States
- A concealed carry of handgun license issued by Kansas or a concealed carry of handgun or weapon license issued by another state or district of the United States
- A United States passport
- An employee badge or identification document issued by a municipal, county, state, or federal government office
- A military identification document issued by the United States
- A student identification card issued by an accredited postsecondary institution of education in the state of Kansas
- A public assistance identification card issued by a municipal, county, state, or federal government office
- An identification card issued by a recognized Indian tribe

### **Free Photo IDs**

A person who does not possess any of the approved documents that may be used for voting has two options:

#### 1. Free nondriver's ID card from DMV

A registered voter who does not have a qualifying photo ID for voting purposes may obtain a fee-waived nondriver identification card from the Division of Motor Vehicles. The person must (1) swear under oath that the person does not possess any of the acceptable photo ID documents, and (2) produce evidence that the person is registered to vote. The person still must meet the requirements to obtain the ID card, including proving U.S. citizenship or lawful presence and residency. [KSA 8-1324(g)]

A person applying for a fee-waived nondriver ID card from DMV who does not possess the documentation required for the card may obtain a fee-waived certified copy of the person's birth certificate from the Office of Vital Statistics in the Kansas Department of Health and Environment. The Office of Vital Statistics only has birth certificates for persons born in Kansas. [KSA 65-2418(a)(3)]

#### 2. Free state voter ID document

The Secretary of State's office offers a state photo ID document for use only in voting. This document is "an identification document issued by a ... state...agency" as prescribed in KSA 25-2908(h)(1)(H).

There are two types: one for persons born *outside Kansas* and one for persons born *in Kansas*.

##### a. A person born outside Kansas

A person may qualify if he/she:

- is a registered voter in Kansas,
- does not possess a valid photographic identification document for voting purposes, as defined in K.S.A. 25-2908(h),
- does not possess any of the documents required by the Kansas Division of Motor Vehicles to obtain a free nondriver's identification card, and

- was born outside Kansas and therefore would be required to pay a fee to obtain a birth certificate or other qualifying document from another state, district or territory.

This person must submit Form SID-NK (State Identification Document-Non Kansas) according to the procedure outlined below.

b. A person born in Kansas

- is a registered voter in Kansas,
- does not possess a valid photographic identification document for voting purposes, as defined in K.S.A. 25-2908(h),
- does not possess any of the documents required by the Kansas Division of Motor Vehicles to obtain a free nondriver's identification card, and
- was born in Kansas but the Office of Vital Statistics has no record of the person's birth. The person must have applied for a certified copy of his/her birth certificate and must provide a copy of a "No Certificate Found" letter from the Office of Vital Statistics stating that the birth certificate could not be provided.

This person must submit Form SID-K (State Identification Document-Kansas) according to the procedure outlined below.

Procedure for Voter

1. Contact the county election office or the Secretary of State's office for information about the procedure.
2. Visit the county election office or the Secretary of State's office to
  - (a) complete Form SID-NK or Form SID-K, whichever is appropriate,
  - (b) have a photograph taken,
  - (c) submit documentation verifying the person's address.

Documentation cited in (c) above may be: a utility bill, telephone bill, paycheck stub, bank statement, or government document indicating the person's name and address.

(d) Form SID-K also requires the applicant to submit a copy of a letter from the Office of Vital Statistics stating that the Office was unable to comply with the applicant's request for a copy of a birth certificate.

3. If application is made in the county election office, the election office shall forward the completed Form SID-NK or Form SID-K, all documentation submitted and the person's photograph to the Secretary of State's office.
4. Upon receipt of the application and other information, the Secretary of State shall assess the validity of the application and shall either
  - (a) issue a state ID document to be used only for the purpose of voting, or
  - (b) issue a notice stating that the person's application was rejected, and the reason for the rejection.

Procedure for County Election Officer

1. Provide copies of the Provisional Ballot Receipt to each election board with instructions to hand them to each provisional voter.

2. If voters contact the election office about the procedure for applying for a free state ID document, assist them in completing the process by (a) providing Form SID-NK or Form SID-K, (b) taking digital photos, (c) collecting copies of any documents submitted by the voter, and (d) faxing or emailing the form, photo and documents to the SOS office. The email address is [election@sos.ks.gov](mailto:election@sos.ks.gov).
3. Accept and file state ID documents or rejection notices from the SOS office. Present copies of such documents or notices to the county board of canvassers along with the provisional ballots for determination of the validity of the corresponding provisional ballots.

### **Exemptions from the ID requirement**

1. Any person whose religious beliefs prohibit photographic identification may be exempted from the photo ID requirement. Any such person must complete and sign a declaration Form DRO, the Declaration of Religious Objection, is designed for this purpose. These voters may submit Form DRO to the Secretary of State's office or the county election office before election day, or they may sign the form at the polling place on election day.
2. Any voter 65 years or older may use an expired photo ID document. [KSA 25-2908(h)(1)]

The following two exemptions do not apply to voters at the polling place on election day.

3. Permanent advance voters
4. Military personnel and nonmilitary overseas U.S. citizens who vote by absentee ballot pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). [KSA 25-2908(i), KAR 7-46-3]

### **Further Guidelines on Assessing Photo ID Document**

If the photograph on the ID document does not match the voter, the election board must issue a provisional ballot.

If the board member is uncertain whether the ID document belongs to the voter:

- Ask the voter to state his/her date of birth to determine if the ID document is valid.
- Ask the voter for a second ID document.
- Use personal knowledge or the knowledge of another poll worker. If a board member is acquainted with the voter and has no reason to suspect the ID document is not valid, they may allow the person to vote. This does not exempt the voter from providing an ID document.

If the name on the ID document does not match the poll book, issue a provisional ballot. The address on the ID document does not have to match the poll book. Ask the voter for his/her address, and then use the poll book to verify the voter's address. The ID document should not be used to verify the voter's address

### **Election Board Authority**

Election boards are responsible for all activities that occur at the polling place. The supervising judge, acting under the direction of the county election officer, enforces laws and county policies regarding voting procedures. One important component of this duty is to prevent illegal activities such as electioneering. This sometimes requires coordination with local law enforcement officials. [KSA 25-2810]

Some CEOs have adopted policies prohibiting cell phones, cameras, video cameras or Bluetooth devices in polling places. These items may be prohibited to protect voters' ability to vote without intimidation or distraction, to prevent discussions about ballot measures, and to prevent wireless communications which may allegedly interfere with the operation of electronic voting equipment. Some CEOs also have adopted policies prohibiting the distribution of printed materials at the polling place or within 250 feet of the entrance. Even if the printed materials are not related to any candidate or issue on the ballot, their distribution may be prohibited to avoid situations that may be nuisances or distractions for voters. Examples include the distribution of religious pamphlets at polling places held in churches.

This type of policy is consistent with the statutory responsibility of election boards: "Each election board shall have the control of its voting place and election procedure under the sole supervision of the secretary of state, county election officer, deputy county election officer and the supervising judge." [KSA 25-2810(a)]

### **Concealed Weapons**

Before 2013, guns were prohibited in polling places by KSA 75-7c10(a), which specifically excluded the carrying of concealed firearms in polling places on the day of an election and from any school, attendance center, administrative office, community college or university or public library operated by the state, or any church. In 2013, the Personal and Family Protection Act was passed by the Kansas Legislature. This law allows persons with concealed carry permits to carry weapons into public places, including facilities owned or leased by municipalities, except under certain defined circumstances. Many election-day polling places are located in these types of facilities, so counties must take the new law into account when organizing their polling places. Several questions arose regarding how the law applies to polling places, and Attorney General Opinion 2013-20 provides some guidance on this matter. (See Section b 9.)

## **2. Advance Voting**

### **Background**

Kansas is one of a growing number of states that have adopted early voting systems to encourage higher voter turnout and to make voting more convenient and accessible. The law, adopted in 1995, refers to early voting in Kansas as advance voting. The plan for advance voting was developed as a “no-excuse absentee” system, meaning the existing absentee voting system was simply expanded to allow any registered voter to choose to vote before election day, whereas under the old absentee voting system they had to specify a reason for voting early: absence from the county on election day, sickness or disability, or religious belief or practice. [KSA 25-1119(a)]

Advance voting is in effect for all official elections conducted by the county election officer.

There are two principal methods of casting an advance ballot: by mail or in person. The voter may choose which method he/she prefers to use. [KSA 25-1122]

### **Satellite Advance Voting**

From 1999 to 2008, counties with populations greater than 250,000 were authorized by law to conduct in-person advance voting at satellite locations—that is, locations other than the county election office. A law passed in 2008 authorizes, but does not require, all counties to conduct satellite advance voting. [KSA 25-1122(f)]

The county election officer designates the places, dates and times for satellite advance voting. It is recommended that a notice be published in the newspaper and other media such as feature stories and radio spots be used to promote it. Any registered voter may appear at a satellite location during the specified hours and vote an in-person advance ballot the same as if the voter were in the county election office.

The CEO may choose one of two types of satellite advance voting: sequential or simultaneous. Sequential means the sites are open one at a time on different days; at no time are more than one site open. Simultaneous means there are more than one site operating at the same time.

There are security considerations in conducting satellite advance voting. Unauthorized access to voting equipment and to the statewide voter registration system must be prevented. If the CEO is conducting satellite advance voting with a live feed to the voter registration database, it must be done using secure connections on the county’s network.

Another important consideration for the CEO in conducting satellite voting is to prevent any voter from voting more than once. This may be done either through a live connection to the voter registration database where voter history is instantly updated, or, in a

sequential satellite setting, through the use of paper poll books which are updated after each day's voting before the next site opens.

The Secretary of State developed a County Election Officer Guide for Satellite Advance Voting in coordination with a task force of county election officers. The Guide should be consulted by any CEO contemplating the adoption of satellite advance voting.

### **Periods of Advance Voting**

The county election officer is required to begin transmitting *mailed* advance ballots on the twentieth day before the election, but no earlier. [KSA 25-1123(a)] For *in-person* advance voting in the election office, the election officer must begin the process on Tuesday one week before election day, but may begin it earlier, any time up to twenty days before the election. (See the Advance Voting Timetable at the end of this section.) [KSA 25-1122(c)]

The advance voting process may be divided into four phases:

- a. applying for ballots,
- b. transmitting ballots,
- c. casting ballots, and
- d. canvassing.

#### **(a) Applying for Ballots**

No advance ballot may be issued to any voter unless the voter has signed an application for a ballot. This may be done through the mail, by fax, or in person. There are no restrictions on who may distribute blank applications, but the law requires the voter to personally sign the ballot application unless the voter is physically unable to do so due to a disability. [KSA 25-1128(d)] Individuals, groups, political parties and candidates may distribute applications through the mail or door to door but they may not sign for the voters. If such private individuals or groups collect signed applications and submit them to the county election office for the voters, the applications must be transmitted to the election office within two business days of signing. [KSA 25-1128(b)]

For in-person advance voting in the election office, many county election officers have devised a log book with the required language of the application at the top of each page with lines for voters' signatures below. This reduces the amount of paper in the files. Some counties use electronic poll books, which may allow the voter to sign an electronic signature pad instead of a paper form or poll book.

The beginning of the application period for mailed advance ballots varies by the type of election, but the period is open at least 90 days in all cases. Applications filed before the opening of the application period should be held by the county election officer and processed when ballots are ready for distribution. [KSA 25-1122(b)(8)] The end of the application period for mailed advance ballots is always the Friday before the election, although in many situations the applications need to be submitted earlier to allow sufficient time for mailing the ballots and returning them. The deadline for applying for and casting in-person advance ballots is noon the day before the election. Advance voters

with illnesses or disabilities are exceptions to this deadline. (See Special Situations below.) [KSA 25-1122]

For in-person advance voting, the application period is the same as the voting period, which may begin as early as twenty days and as late as seven days before the election. [KSA 25-1122(c)] In-person advance voting ends at noon the day before the election. The in-person advance voter signs the application at the advance voting site and receives the ballot.

The application form for regular advance ballots is prescribed in law. Form AV1, developed by the Secretary of State, is widely used and has been produced in several formats, some of them designed for postcard mailings or envelope mailings. Forms are available on request from any election office, on the Secretary of State's Internet web site at [www.sos.ks.gov](http://www.sos.ks.gov), and at some county election officers' sites. [KSA 25-1122d(a)]

### **Voter Identification**

Advance voters are subject to the photo identification requirements the same as other voters.

Voters who vote advance ballots *in person* meet the identification requirement the same as a voter at the polling place on election day, by showing the board worker or election office employee their driver's licenses or other acceptable forms of photographic identification.

Those who vote *by mail* may provide their driver's license or nondriver's identification card numbers on their ballot applications or they may send a photocopy of identification with their ballot applications. The county election officer checks the numbers against the voter registration data verified by the Division of Motor Vehicles. If the numbers are verified, nothing further is required and a regular advance ballot is issued. If the numbers are not verified, the county election officer asks the voters to provide valid driver's license numbers or copies of identification documents. Otherwise the ballots are provisional and are not counted unless the voters provide valid identification before the county canvass.

For qualifying documents that do not contain numbers that can be verified with DMV, the photo ID document should be verified with the information on the poll book to ensure consistency.

### **Faxing and Electronically Transmitting Applications**

A voter is authorized by law to electronically transmit the signed application form to the election office by facsimile. Thus, the blank application may be faxed to the voter and the signed application may be faxed back to the election office. However, this does not permit the faxing of *ballots*, either blank or marked. [KSA 25-1122(a)]

County election officers also accept ballot applications and photo ID documents electronically via email attachment. This type of transmission is often easier for voters than faxing, and many times the quality and legibility of the emailed document is better than a fax.

## **Special Situations: Permanent and Assisted Advance Voting**

The laws provide two special application procedures for voters with temporary or permanent sicknesses and disabilities.

### **Permanent Advance Voting Status**

(1) A person with a permanent illness or disability may apply at any time to the county election officer for permanent advance voting status. Once a voter obtains permanent status, the county election officer automatically sends the voter an advance ballot every election without the voter having to renew the application each time. The law authorizes the Secretary of State to prescribe the application form, which is Form AV2, “Application for Permanent Advance Voting Status.” [KSA 25-1122d(b)] It requires the voter to specify the nature of the permanent physical disability or illness that makes it difficult or impossible for the voter to go to the regular polling place to cast a ballot. A permanent advance voting applicant is not required to furnish a physician’s records or signature, but the voter must sign an affirmation on the form. The applicant should be specific as to the nature of the sickness or disability; using “age” or “failing health” is not adequate. [Post Audit Report 98PA34]

The county election officer is required by law to maintain a separate list of permanent advance voters for public inspection. [KSA 25-1122(e)]

Note: Permanent advance voters are exempt from the photographic identification requirements. [KSA 25-2908(i)(1)]

Removal from Permanent Advance Voting List—Sometimes permanent advance voters whose physical conditions worsen over time fail to return their ballots. A law passed in 2001 allows the county election officer to send cancellation notices to permanent advance voters who have failed to return their ballots for two consecutive national/state general elections. The notice tells the voters that their names will be removed from the permanent list unless they renew their application for permanent status within thirty days after the date the notice was mailed. Any such permanent advance voters who reapply for permanent status are reinstated; those who do not are removed from the list of permanent advance voters. Loss of permanent status *does not* affect voter registration; such persons remain registered voters in the county and precinct where registered unless canceled for a separate reason.

Form AV3, “Notice of Cancellation of Permanent Advance Voting Status,” is used in this process to notify voters. [KSA 25-1122(i)]

### **Assisted Advance Voting**

(2) A voter who has a temporary illness or disability or who is not proficient in reading the English language may receive assistance in applying for, marking and returning their advance ballot. This might apply to persons on the permanent list or to persons who are temporarily sick or disabled, such as hospitalized persons. If the voter requests the assistance of another person, the person rendering assistance must file a statement with the county election officer stating that they assisted the ill/disabled voter

and that they did not exercise undue influence on the ill/disabled voter's decisions. Form AV5, "Affidavit of Assistance," was prescribed by the Secretary of State for this purpose. The affidavit may be filed with the county election officer before the ballot application process or it may be returned with the application and ballot. It is important that the affidavit of assistance provide the name of the voter who is receiving the assistance. If one person is assisting more than one voter in an adult care home, for instance, it is not enough to file a single affidavit with the words "residents of Valley Manor Care Home" in the blank where the voter's name should appear. The specific name(s) of the voter(s) must be included on the affidavit. [Post Audit Report 93PA34] The affidavit does not replace the application for the advance ballot; the ill/disabled voter is still required to sign an application form, but the person rendering assistance is authorized to assist the voter in the application process, carry the ballot to the voter, assist the voter in marking the ballot if needed, and mail the ballot or deliver it to the election office. The person assisting the voter is not authorized by law to sign the voter's affidavit on the ballot return envelope. There are instances in the election process where a person may sign for another person, such as on the voter registration application form or the poll book, but that authority is not written into the laws governing advance voting. [KSA 25-1124(b), (d)]

Advance voters with illnesses or disabilities or who are not proficient in reading the English language have a special application deadline. They may apply for ballots any time during the regular application period through election day until the hour the polls close. This provision is in the law to accommodate voters who have unforeseen illnesses, accidents or hospitalizations on election day. [KSA 25-1122(c)]

### **Power of Attorney**

Although a person may assist a sick or disabled voter in applying for, marking and returning a ballot, the act of voting itself may *not* be done by power of attorney. The power of attorney held by one person for another does not extend to the voting process. There is no law specifically authorizing or prohibiting it, but the Attorney General issued an informal opinion to the Secretary of State on September 16, 1997 stating that the power of attorney does not authorize a person to vote for another. The person with power of attorney may fill in information on application forms and may assist in other ways, but may not sign applications for the voter and may not mark and cast the ballot in place of the voter. (See chart on p. II-67.) [Attorney General letter to Secretary of State, September 16, 1997]

### **Replacement Advance Ballots**

If a voter has applied for an advance ballot and the ballot is destroyed, spoiled, lost or not received by the voter, the voter may apply for a replacement ballot. Any such replacement ballot issued by the county election officer must be a provisional ballot. The regular advance ballot application deadlines apply in all such instances. Although the law does not specifically require a *written* request in such cases, the Secretary of State developed Form AV6, called the "Request for Replacement Advance Voting Ballot," for this purpose. [KSA 25-1122f]

## **Mobile Election Boards at Nursing Homes**

A law passed in 2008, in effect in 2010, provides for a special voting procedure at nursing homes, assisted living facilities and hospital-based long term care facilities.

The program has two main benefits: (1) It expands voting opportunities for a segment of the voting population that often finds it difficult to vote or to obtain information about voting, and (2) it increases the number of advance ballots cast in a controlled setting, thereby reducing opportunities for intimidation or coercion of voters.

### **Key features of the program are:**

- It is limited to nursing homes, assisted living facilities and hospital-based long term care facilities as defined in state law.
- It is limited to residents and staff members at qualifying facilities that choose to participate. It is not a satellite advance voting site where any registered voter in the county may vote.
- The program is optional at all levels: optional for the county election officer to conduct it, optional for each qualifying facility to participate, and optional for each resident or staff member at a participating facility to vote with the mobile election board.
- It applies to all official elections except mail ballot elections.
- It follows advance voting procedures as closely as possible.
- Residents maintain their traditional voting options—at the polling place on election day, by advance ballot or permanent advance voting.

### **Procedure for CEO:**

1. The CEO contacts each facility and asks the administrator if the facility will participate in the mobile election board program.
2. For each participating facility, the CEO obtains a list of residents and compares it to the voter registration list to determine (1) which residents need to register to vote, (2) which registrants are already on the permanent advance voting list, and (3) which ballot style each resident will need.
3. The CEO consults with the administrator at each participating facility to agree upon a date and time for voting at each facility.
4. The CEO appoints, trains and equips one or more mobile election board.
5. The CEO receives ballots, supplies and equipment from the election board when voting is completed.

### **Voting Procedure:**

1. The election board asks each resident if he/she wishes to vote.
2. The board asks each voter to complete an advance ballot application (Form AV1) unless the voter is on the permanent advance voting list.
3. The board provides the appropriate ballot to the voter and remains present while the voter completes the ballot, ensuring the voter's privacy from board members and other persons.

4. If a voter requests assistance, it may be provided by either two board members or a person of the voter's choice.

5. Instruct the voter to either enclose the ballot in an envelope and sign the envelope, or deposit the ballot in a ballot box, if provided by the CEO. Board members may complete the information on the envelope for a voter except the signature.

6. Make a notation on the resident list (or poll book, if provided by the CEO) that the voter has voted. It is important to report this information to the CEO so voter history can be updated to prevent multiple votes by the same voter.

NOTE: If DREs are provided by the CEO, the voting procedure will need to be revised accordingly.

#### **Rules for Mobile Election Boards**

- Individuals with power of attorney, including mobile poll workers, are prohibited from casting ballots for voters.
- Don't change the addresses of voters unless asked to do so.
- Don't force any voter to participate.
- Don't vote for anyone.
- Take all necessary steps to ensure the privacy and secrecy of each person's vote.
- Do not inspect ballots or tally votes.
- Never leave one individual alone in the presence of a voter or in possession of any ballot or ballots.

The Secretary of State's office provides a "Guide for Mobile Election Boards" which was developed in coordination with a task force of county election officers appointed for this purpose. The Secretary of State also obtains from the Kansas Department of Health and Environment a list of qualifying facilities in each county and furnishes it to each CEO.

#### **(b) Transmitting Mailed Advance Ballots**

If signed applications are received in the election office before the twenty-day advance voting period, the county election officer holds them until advance voting begins. When applications are received during the advance voting period, the county election officer must send the ballots within two business days of receipt of properly completed and signed applications.

Before mailing an advance ballot, the county election officer must (1) verify the driver's license number or other ID document provided by the voter on/with the ballot application and (2) verify the voter's signature. Verification is done using the ELVIS statewide voter registration database or, for driver's license numbers that cannot be verified using ELVIS, a web-based lookup function provided by the Division of Motor Vehicles. If the number and signature are verified, the election officer sends a regular advance ballot. If not, the election officer must attempt to contact the voter to obtain a new signature or the necessary identification. If election day is near, a provisional ballot should be sent so as not to disenfranchise the voter. The voter may provide any necessary documentation with the returned ballot or before the county canvass in order to have the provisional ballot count. [KSA 25-1122(e)]

Advance ballots are mailed with voting instructions and a return envelope. Outgoing postage is paid by the county, but counties are not required to pay return postage, although some have chosen to do so as a voting incentive. Some counties using optical scan ballots enclose pencils with the ballots to discourage voters from using other writing utensils that might produce markings that are undetectable by the scanning equipment. However, some local postal officials will not allow pencils to be enclosed in the outgoing ballot envelopes because they cause difficulties with automated postal equipment. [KSA 25-1123]

### **(c) Casting Advance Ballots**

#### **Mailed Advance Ballots**

Upon receipt of a *mailed* advance ballot, the voter marks it and personally encloses it in the return envelope. The voter must sign the statement on the outside of the envelope saying that they personally marked the ballot and enclosed it in the envelope and that they have not voted another ballot at that election. [KSA 25-1120, 25-1124(a)]

#### **Security Procedures for Mailed Ballots**

An advance voter may mail or deliver the ballot to the election office. If the voter wishes to have another person mail or deliver the ballot, the voter must designate the delivery person in writing.

The person designated to mail or deliver the ballot must sign a statement saying that he/she (1) did not exercise undue influence on the decisions of the voter, and (2) mailed or delivered the ballot as instructed by the voter.

In some counties the required statements appear on the ballot return envelope; in others the statements are on a separate form enclosed with the ballot. [KSA 25-1128(g)]

#### **In-Person Advance Ballots**

The voter who wishes to vote *in person* in the election office or at a satellite location must first sign the application, provide photographic identification in the same manner as voters casting ballot at the polling place on election day, then mark the ballot and deposit it in the ballot box. Some optical scan systems allow the voter to insert the ballot into the scanner. No matter what type of ballot is used (except electronic voting), as a guarantee of secrecy the voter has a right to request an envelope to seal the ballot in before depositing it in the ballot box. In such cases, the envelope used is a regular return envelope used by a voter to mail back an advance ballot. It has the required statement and signature line printed on it. [KSA 25-1123(a)]

All advance ballots must be received in the county election office before the close of polling hours on election day in order to be valid. [KSA 25-1132]

If a voter has received an advance ballot but decides to vote at the regular polling place, the voter may return the unvoted advance ballot to the election board at the voter's regular polling place and vote a provisional ballot. The election board voids the advance ballot. [KSA 25-2908(f)]

## **Advance Voting Lists**

The county election officer is required to maintain a list of all voters who have applied for and returned advance ballots. [KSA 25-1122(e)] The list is available for public inspection, which is often requested by candidates, campaigns and political parties. If a registered voter asks to view the list, the county election officer must first require the person to provide the person's name, address, signature, date and time of inspection on a log book. Also, the person requesting must show a driver's license or other reliable identification to the county election officer. The county election officer may charge a reasonable fee for copies of records, according to the Kansas Open Records Act.

A list for each precinct is sent to the polling place on election day to enable the election board workers to prevent voters from casting a second ballot at the polling place after having already voted in advance. [KSA 25-1126] Having accurate, up to date advance voting lists at the polls is one of the principal tools for preventing multiple ballots being cast by the same individuals. [Post Audit Report 93PA34] If a voter who has already cast an advance ballot goes to the polling place to vote, the voter must vote a provisional ballot.

### **(d) Canvassing Advance Ballots**

The county election officer appoints a special election board to count advance ballots. [KSA 25-1133, 25-1135] The special board conducts the original canvass of advance ballots. The county election officer delivers the ballots to the election board after the ballots have been collected. No ballots received after the close of polls on election day are counted. [KSA 25-1132] It is strongly recommended that the county election officer provide *written* instructions to the special election board. Written instructions are always recommended for anyone who handles ballots. [Post Audit Report 93PA34]

In counties using optical scan equipment, it is permissible to scan the ballots and store the data before election day, but no vote totals may be tabulated or disseminated until after the polls close on election day. [KSA 25-1134(b)]

The special election board may challenge ballots if they are mismarked or the voter's intent is unclear. These challenged ballots are referred to the county board of canvassers for final decisions at the county canvass on Monday or second Thursday after the election. [KSA 25-1136(a)]

### **Envelope Signatures**

A mailed ballot returned in an unsigned envelope is not counted. [KSA 25-1134(b)] Although the law does not specifically require CEOs to compare the signature on each envelope to the signatures on file to determine whether the ballots were completed and statements signed by the voters themselves, signature comparison is a recommended practice because the signature is the only way to provide ballot security. If a signature comparison raises a question as to the validity of the ballot, the ballot may be challenged (made provisional) and referred to the county board of canvassers for determination of its validity. Advance ballots should be checked against the poll books to ensure that no voter casts two ballots—one in advance and one at the polling place.

**Envelope Addresses**

An advance voter's failure to complete the address line on the ballot return envelope does not invalidate the ballot. [AGO 2012-26] Failure to provide the address also does not invalidate a voter's ballot in a mail ballot election.

**Legal References**

K.S.A. 25-1114 through 1140, 25-2908(c), 25-3002(f)

K.A.R. 7-36-1 through 7-36-6

Attorney General letter, September 16, 1997

Attorney General Opinion 2012-26

Post Audit Report 93PA34

AGO 2013-20

## Advance Voting Timetable

**REGISTERED  
VOTER REQUESTS  
APPLICATION:**

**APPLICATION  
PERIODS:**

**TRANSMITTAL  
OF BALLOTS:**

**IN PERSON**

Begins the Tuesday before the election and ends at noon on the Monday before the election\*

Begins the Tuesday before the election and ends at noon on the Monday before the election\*

**BY MAIL**

Begins April 1 for statewide primary elections and 90 days before statewide general elections and ends on the Friday before the election

Within 2 days of receipt of the application, but no earlier than 20 days before the election

**BY PHONE**

Same as mail application period

Same as mail application period

**PERMANENT**

May apply for permanent status at any time

By mail during the transmittal period

**ASSISTED**

During periods specified for in-person, mailed or permanent ballots, through election day

By mail or in person to the person providing assistance

\*The county election officer may choose to begin the process up to 20 days before the election.

#The application periods for other elections are specified in KSA 25-1122(b)

### **3. Federal Services Voting**

Federal services voters, or UOCAV voters, are a special category of voters. A federal law called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) guarantees special status for military personnel, serving either domestically or abroad, and civilian U.S. citizens living abroad. Election officers in all states must pay special attention to this category of voters. The definition of federal services voters in the UOCAVA is written into Kansas law in KSA 25-1214.

The UOCAVA is administered by the Federal Voting Assistance Program (FVAP), which is part of the Department of Defense in Washington, D.C.

In Kansas, federal services voting is the only type of voting still referred to as absentee voting. In 1995, regular absentee voting was changed to advance voting, but the phrase “absentee voting” is still used to refer to federal services voting.

#### **Ballot Applications**

The law allows absentee voters who qualify to vote under the UOCAVA to apply for a ballot to the county election officer in the county they consider their residence county. It is not necessary for them to be registered to vote in the county where they request a ballot, although many are. [KSA 25-1215]

The ballot application form designed by the FVAP for this purpose is called the Federal Post Card Application (FPCA). A federal services voter who files an FPCA automatically receives a ballot in any election in which the UOCAVA voter is qualified to vote during the calendar year in which the application was submitted. [KSA 25-1216(a)] There is no statutory deadline for applications to be submitted, but they must be submitted early enough to allow transmittal time to and from the voter, and many federal services voters are in remote locations, so ample transmittal time must be built in.

#### **Applications by Fax and Email**

Kansas law allows UOCAVA voters to receive and return their ballots by fax, email or other electronic means authorized by the Secretary of State to save time in receiving and returning the ballot. Currently, fax and email transmission are in use in Kansas.

This applies to anyone qualified to vote under the federal UOCAVA law:

- (a) military federal services voters, their spouses and dependents, and
- (b) civilian federal services voters living outside the United States, their spouses and dependents.

They must submit a signed statement along with the ballot saying that by faxing, emailing or electronically transmitting their ballot they are knowingly waiving their right to secrecy. Faxing and emailing of applications and ballots is done at the request of the voter. [KSA 25-1216(b), SOS Form S1F]

#### **Voting Eligibility**

Although federal services voters are not required to be registered to vote in the counties where they apply for their ballots, they must possess the constitutional qualifications of

electors. Their ballots contain all races and special questions that are on regular ballots. [KSA 25-1218]

### **Voter Identification**

Federal services voters are not subject to the photographic voter identification requirement. However, to meet this exemption, federal services voters must use the federal UOCAVA ballot application (FPCA) and not use the Kansas advance ballot application form (Form AV1). [HAVA Sec. 303(b)(3)(C)(i)]

### **Ballot Preparation**

Because UOCAVA ballots are distributed so early, often the regular ballots to be used for advance voting or on election day are not printed yet. In such cases, the election officer produces a paper ballot on a personal computer and photocopies it as needed. These ballots must be hand-counted and manually added to the election results.

### **Ballot Distribution**

According to federal and state law, UOCAVA ballots must be transmitted by the county election officers to the voters by the 45<sup>th</sup> day before the election. This is the earliest of any ballot deadline. If candidate lists are not finalized in time to have ballots printed before the deadline, often a special ballot must be prepared on a personal computer and photocopies mailed or faxed to the voters. [KSA 25-1220]

Ballots are mailed in an outgoing envelope with voter instructions and a return envelope included. The Secretary of State supplies outgoing and return envelopes. The FVAP prescribes the format of the envelopes, and the Secretary of State prints and distributes the envelopes to county election officers according to their requests. [KSA 25-1219(a)]

The Secretary of State's office also prepares a sample set of voter instructions, called Form FS3, "Instructions for Voting Federal Services Absentee Ballot." County election officers reproduce the instructions as needed for inclusion with outgoing ballots.

Some election officers also include a copy of Form S1F, "Affidavit of Federal Services Facsimile Voter," to enable the voter to fax the ballot if needed. Enclosing the form is not required, but it helps the voter in some cases when the time remaining to return the ballot runs short due to slow mail delivery to overseas locations.

The voter must sign a statement on the return envelope before sending the ballot back to the election office. [KSA 25-1219(b), SOS Form S1]

### **Deadline for Casting Ballots**

Federal services absentee ballots must be received in the county election office before the close of polls on election day in order to be counted and included in the official election results. [KSA 25-1221]

### **The FWAB**

The Federal Write-In Absentee Ballot (FWAB) is provided by the FVAP for use by UOCAVA voters in cases when their ballots were not received in time for return before

election day. Kansas and federal laws authorize use of the FWAB in the following circumstances:

- (a) The voter is a UOCAVA voter located outside the United States,
- (b) The voter has submitted a proper and timely ballot application (FPCA), and
- (c) The ballot was not received.

When needed, UOCAVA voters obtain the FWAB on the FVAP's web site and submit it to the appropriate Kansas county election office.

### **Canvassing Ballots**

All UOCAVA ballots must be counted, tabulated and reported along with the regular election results using the same procedures as are used for all other ballots. County election officers must take measures to ensure that such voters do not vote twice, the same as they do for advance voters.

### **The MOVE Act**

The Military and Overseas Voter Empowerment (MOVE) Act was passed by the U.S. Congress in 2009. It contained the following provisions intended to simplify the voting process for UOCAVA voters and enable them to receive and return their ballots before election day.

- Allow UOCAVA voters to request voter registration applications and absentee ballot applications by mail or electronically. Voters may choose how they want to receive them—by mail or electronically.
- Transmit materials to voter via method preferred by voter.
- To the extent practicable, protect the security and integrity of the application request process and protect the privacy of the voter.
- Designate at least one electronic means of communication for providing UOCAVA voters with information. Include the designated means on all information. Also, the state *may* provide the means for CEOs to communicate with voters electronically.
- Ballot tracking—Provide a free access system for UOCAVA voters to determine if their ballots were received.
- Accept the FWAB (Federal Write-in Absentee Ballot).
- Report on the number of ballots transmitted and received and other data as the Federal Voting Assistance Program (FVAP) determines appropriate.
- The FVAP must implement a system for UOCAVA voters to enter their address and receive a candidate list and print a FWAB with instructions.

### **Legal References**

Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S. Code 1973ff  
Military and Overseas Voter Empowerment Act  
KSA 25-1214 through 25-1228

#### **4. President-Only Voting**

Special provisions in Kansas law allow voters who have moved immediately before a presidential election to vote a limited ballot containing only the presidential race. These provisions are relevant only every four years in presidential elections, and only for the general election because presidential candidates do not appear on the state primary ballot.

##### **Categories**

There are three categories of president-only voters.

**(1) New residents**

These are persons who move to Kansas from another state less than 45 days before the presidential election. Kansas law requires them to possess the qualifications of electors in Kansas, except for the residency requirement. The law does *not* require such persons to have been registered to vote in the state of their previous residence.

**(2) Former residents**

These are voters who are registered to vote in Kansas but move from Kansas to another state less than 45 days before the presidential election.

**(3) Relocated residents**

These are voters who move from one precinct in Kansas where they are registered to another precinct in Kansas within 20 days or less before the presidential election.

[KSA 25-1801]

##### **Ballot Applications**

The law prescribes a separate ballot application form for each of these categories of voters. The deadline for filing the applications is noon the day before the election, which coincides with the deadline for in-person advance voting. The Secretary of State's office provides the following forms in compliance with the laws:

- a. New resident voters--Form PN, Application of New Resident
- b. Former resident voters--Form PF, Application of Former Resident
- c. Relocated resident voters--Form PR, Application of Relocated Resident

The county election officer where these applications are filed is required to send a copy of each application to the election officer in the other affected jurisdiction to prevent multiple ballots being received and cast by the same voter.

Because mail transmission times might make it impossible to prevent multiple votes by one voter, some county election officers choose to telephone, fax or email the information to the election officer in the other affected jurisdiction.

##### **Ballot Distribution**

Ballots may be distributed not earlier than 25 days before the election nor later than noon the day before the election. A return envelope is included with the ballot, bearing a declaration that must be signed and dated by the voter. [KSA 25-1806(b)]

**Casting Ballots**

Ballots must be received in the county election office before the close of polls on election day to be counted, tabulated and reported as part of the official election results.

[KSA 25-1808]

**Legal References**

KSA 25-1801 through 25-1811

## 5. Safe at Home Voting

Kansas is one of a growing number of states (as of 2012, 33 states) offering an address confidentiality program. Safe at Home provides a substitute address and a free mail forwarding system for victims of domestic violence, sexual assault, trafficking or stalking who are in fear for their safety. In effect, the personal information of anyone who qualifies for and enrolls in the program is removed from public records. All mail is delivered to a post office box maintained by the Secretary of State.

One aspect of the program is a special voting procedure for program participants. An administrative regulation adopted in 2006 specifies the voting procedure for Safe at Home participants. [KAR 7-44-7]

### Safe at Home Voting Procedure

1. The program participant submits a voter registration application to the Safe at Home program coordinator in the Secretary of State's office. Subsequent address changes are also submitted to the coordinator. The enrolling assistant processes program applications for an enrolling agent, which is an office providing counseling and shelter services to victims. The program participant will provide identification to the enrolling assistant, who checks a box on the program enrollment form indicating that the identification document has been reviewed.

2. Voting is done by mailed advance ballot. The participant is designated as a permanent advance voter by administrative regulation, and thus will automatically receive a ballot for each election in which the participant is qualified to vote. The program coordinator requests the appropriate ballot, envelopes and instructions from the county election officer where the participant resides. As permanent advance voters, program participants are exempt from the photo identification requirement.

3. The CEO sends the ballot to the program coordinator, who mails it to the voter. Outgoing postage is paid by the Secretary of State. The voter mails the completed ballot in the return envelope to the coordinator. The coordinator verifies the information and signature on the ballot envelope, redacts the name, address and signature, and mails the unopened envelope containing the ballot to the CEO for tabulating. The program coordinator includes with the ballot a recommendation to canvass or not canvass the ballot, assuming the county finds the ballot to be otherwise valid.

The elections division of the Secretary of State's office provides the program coordinator a list of upcoming elections, including special elections, on the first day of each month. The program coordinator requests ballots from the appropriate CEOs if program participants are eligible to vote.

### Voter Status

Every CEO must create at least one Safe at Home voter in ELVIS with the name "Home, Safe One" (followed by Two, Three, etc. as needed). Enter the county election office's address in the voter's address. The birth date should be entered as January 1, 1950.

The Secretary of State has created a Reason → Safe at Home. These records should be entered with a Status → Suspense (or Incomplete).

These records should be processed as mailed advance voters. The CEO must maintain voter history for these voters as with regular voters.

Safe at Home voters must not appear in poll books, VoterView or when providing voter registration data to members of the public.

After the election the CEO should change the status from “suspense (or incomplete)” to “canceled” on all Safe at Home records. At the next election, the CEO should change the status from “canceled” to “suspense (or incomplete).”

**Legal References**

KSA 75-451 through 75-458

KAR 7-44-1 through 7-44-7

#### **d. Challenged/Provisional Ballots**

The term “provisional voting” was introduced in Kansas in 1996 as a result of the NVRA. Before the NVRA was implemented in Kansas, the qualifications of a voter seeking to vote in a given precinct could be questioned by challenging the ballot. Today, provisional ballots and challenged ballots are treated the same in Kansas law. The process for administering and voting them is the same. For the sake of simplicity, they are usually referred to together as provisional ballots.

A provisional ballot results when a registered voter changes his/her name, or changes addresses within the county, and fails to re-register before the election.

[KSA 25-2316c(a), (b)]

A challenged ballot results when there is a question about another qualification of the voter: U.S. citizenship, age, felony conviction, mental competence, residence in the county and precinct, registration, failure to provide photographic identification, or suspicion that the voter has already voted at that election. [KSA 25-414]

When there is any doubt about a voter’s eligibility to vote at the precinct where the voter attempts to vote, a provisional ballot should be provided, even if the voter is apparently unqualified. The facts of the matter can be investigated after election day before the county canvass. [KSA 25-409]

#### **Procedure for Administering Challenged/Provisional Ballots**

1. Before receiving a ballot, the voter completes a new voter registration application form, which is attached to a provisional ballot envelope.

2. The reason for the provisional ballot is written on the envelope, along with the voter’s number in the poll book. Two election board workers must sign the envelope. One of the board workers writes the word “provisional” next to the voter’s name in the poll book.

3. The voter marks a ballot. If electronic voting machines are normally used, the voter is given a paper advance voting ballot unless the electronic voting machine accommodates provisional ballots. The ballot is sealed in the provisional ballot envelope.

4. An election board worker gives the voter information about how to find out after the county canvass whether the provisional ballot counted.

5. The envelope containing the ballot is grouped with other challenged/provisional ballots. These ballots are not counted on election day. They are set aside for consideration by the county canvassers. [KSA 25-409(b)]

See Section III e for an explanation of how provisional ballots are processed and canvassed.

#### **Former Precinct Voting**

One special category of voters is sometimes administered provisional ballots, although it is not necessary for their ballots to be provisional. Former precinct voting allows a registered voter who has moved from one precinct in the state to another precinct in the state within the thirty day period before the election, to return to the voter’s former

precinct where the voter is registered and vote a regular ballot. This type of voting is guaranteed by the Kansas Constitution in Article 5 and in state law in K.S.A. 25-3701 and 25-3702. The law does not require this type of ballot to be provisional, but if there is a question about its validity it may be challenged (made provisional) the same as any other ballot.

### **After-Hours Provisional Voting**

Generally, individuals may vote if they are in line when the polls close. However, in special circumstances the polls may be kept open. When polls are kept open later than the usual hour for closing due to a court order or other order, any ballots cast during the extended voting period are provisional, and they must be kept separate from other provisional ballots due to the possibility that the court's order could be appealed and reversed. In such a case the provisional ballots would be invalid and not counted. [HAVA Sec. 302(c), KSA 25-414(c)]

### **Legal References**

Kansas Constitution, Article 5

KSA 25-409, 25-413, 25-414, 25-2316c, 25-3701, 25-3702

### **e. Authorized Poll Agents**

Elections are conducted as openly and with as much public access as possible, still recognizing the need for control to preserve the secrecy of individuals' ballots. At most points in the electoral process, interested individuals and groups may observe the proceedings at the precinct polling sites, at the county election office, or at the county or state canvass.

The principal means recognized in state law for public observation of electoral proceedings is the authorized poll agent. Poll agents are commonly referred to as poll watchers.

#### **Who are poll agents?**

There are two ways to be designated as an authorized poll agent.

1. Each of the following persons is automatically a poll agent because of the position they hold:
  - a. state or county party chair
  - b. chair of a committee formed to support or oppose a question submitted election
  - c. candidate
  - d. precinct committeeman or woman
  - e. a write-in candidate for statewide office who has filed an affidavit of write-in candidacy with the Secretary of State
2. A person may be appointed to be a poll agent by one of the persons listed above.  
[KSA 25-3005a(a)]

It is important to note the distinction between poll agents who are authorized by law and those who are appointed.

#### **How many?**

Each person who is authorized to appoint poll agents may appoint one per polling place.  
[KSA 25-3005a(b)]

#### **Qualifications**

*Appointed* poll agents must be registered Kansas voters. If they are members of a candidate's immediate family they are exempt from this qualification (some candidates in the past have appointed relatives from out of state). Also, individuals 14 to 17 years old may be appointed poll agents if they meet all other requirements of an elector (U.S. citizenship, residency).

#### **Appointment process**

Appointments must be made in writing on a form approved by the Secretary of State. Form PA is produced by the Secretary of State's office for this purpose. The appointment

form must be filed with the county election office, but no deadline is specified, so they may be filed up to and on election day.

Poll agents must carry their authorization forms with them at any time they are acting as poll agents, and they must present the forms when asked by a precinct or county election worker. Further, they must wear a badge, issued by the county election officer, containing the word “observer” in 32-point type or larger. CEOs are encouraged to supply badges to the supervising judge at each polling place so they can issue them to poll agents who are appointed on election day. [KSA 25-3005a(b)]

When a candidate or precinct committee person is acting as an authorized poll agent, he/she must carry identification supplied by the county election officer. [KSA 25-3005a(c)] In some counties this identification is a letter, but some counties supply a badge to be worn on the lapel.

### **What poll agents may do**

Poll agents may observe the voting process at polling places and may observe the original, intermediate and final canvasses. [KSA 25-3005]

They may request to have an election judge at the original canvass display a ballot to them, but the poll agent may not touch the ballot. [KSA 25-3004]

### **Limits on poll agents’ activities**

Poll agents must carry their appointment forms with them. Candidates and precinct committee persons acting as poll agents must carry identification supplied by the county election officer.

Poll agents must act in accordance with statutes, regulations adopted by the Secretary of State, and directives of the county election officer and supervising judge of any polling place. For instance, they are subject to the same statutes prohibiting electioneering, voter intimidation and disorderly conduct as anyone else.

Poll agents may not participate in the administration of ballots or the ballot counting and tabulating processes. They may not handle ballots.

To help inform poll agents of what they may and may not do, the appointment form, Form PA, contains on the back of the form a list of dos and don’ts. Also, an administrative regulation, KAR 7-45-2, authorizes the supervising judge to instruct poll agents as to their behavior and to ask them to leave the polling place for improper behavior.

### **Legal references**

K.S.A. 25-3004, 25-3005, 25-3005a

### **f. Polling Place Visitors**

In any election a given county or polling place may receive requests for various types of visitors to observe the electoral process. It is best if potential observers request permission rather than show up unannounced on election day. Sometimes the Secretary of State's office receives requests from groups planning to approach one or more CEOs with their request to visit a county.

Each CEO should be prepared for polling place visitors and should train supervising judges on the county's policies regarding observers. Any county could have one or more of the following, although some counties probably will not have any of them. Possible groups of visitors include:

a. Exit pollsters—There are groups that survey voters after they finish voting in order to predict the outcome of the election. Several well-known firms operate nationwide and always contact both the Secretary of State's office and the CEOs before entering any county.

b. Media—There may be requests by local or state media to visit polling places. Sometimes candidates bring media along when they vote.

c. Election observers—In some cases political organizations, including international groups and foreign groups, will request permission from the county election officer or the Secretary of State to observe the voting process in a county or counties. The Secretary of State or county election officer may grant permission on a case-by-case basis, reminding all such groups that they must follow all laws and all policies established by the election officer.

d. Department of Justice (DOJ)--The DOJ has enforcement authority for all four of the major federal voting laws (Voting Rights Act, UOCAVA, NVRA and HAVA) and may at any time send people out to visit localities to see if things are being done correctly. Often they are observing compliance with requirements for Spanish ballots in counties that are required to provide them. They usually signal their intent with a phone call or letter before the visit, but they're not required to do so.

e. Government Accountability Office (GAO)—This federal agency occasionally visits randomly selected polling places nationwide to observe the voting process for voters with disabilities.

f. Poll agents—There is increasing poll agent activity in recent years. Laws passed in 2007 provide some rules for poll agents to follow.

In all cases of polling place visitors, the following points should be emphasized:

- They should notify the SOS and CEO beforehand. In cases of strictly local concern they may go directly to the CEO. Supervising judges need to be warned that they might have visitors.

- Electioneering rules are always in effect. No discussions of anything on the ballot are allowed. Any such discussions must take place outside the 250 foot radius of the entrance of the polling place.

- No photographs or videos of ballots or of voters in the act of voting.

- They may not hinder or obstruct a voter entering or exiting a polling place or during the act of voting, or hinder poll workers in the performance of their duties.

Kansas Election Standards

- CEOs have the authority to adopt policies banning cell phones, wireless and Bluetooth devices and guns and to control the activities of polling place visitors.

### **g. Election Crimes**

The statutes specifying election crimes are contained in Chapter 25, Article 24 of the Kansas Statutes Annotated. They prohibit certain activities such as fraud, bribery, perjury, forgery, corrupt advertising and disorderly conduct. Most of these statutes deal with illegal actions on election day at polling places or during the voting or ballot counting processes. There are very few election crime statutes dealing with other parts of the electoral process such as voter registration and petitioning.

Some of the statutes in Article 24 prohibit certain inappropriate conduct that makes them applicable to everyone. No one may publish or broadcast any paid matter which is designed to aid or injure any candidate or to influence voters to vote for or against a question submitted or proposition without claiming such matter as an advertisement and disclosing the name of the person responsible. [KSA 25-2407] No one may solicit, offer, or accept any benefit (bribe) as consideration to or from any person either to vote for or against any candidate or question submitted [KSA 25-2409, 25-2417] or to induce the signing of nomination papers [KSA 25-2410]. Anyone who intentionally and knowingly answers falsely to any questions regarding an application for registration to vote or qualification of a voter commits election perjury. [KSA 25-2411] If a person intentionally and knowingly signs a name other than his/her own to any petition or nomination paper, marks someone else's ballot, either without that person's consent or contrary to that person's directions, such person commits election forgery. [KSA 25-2412] In addition, no one may possess false or forged election supplies, print or circulate imitation ballots, mark ballots in any way for identification, or destroy election papers or supplies. [KSA 25-2414, 25-2426 through -2429]

A law passed in 2007 creates a crime of advance voting suppression. It is similar to a law against voter registration suppression. The advance voting suppression law makes it a level 9, nonperson felony to knowingly, with intent to impede, obstruct or exert undue influence on the election process, commit any of the following acts:

- Destroy or alter another person's advance ballot without written consent of the voter
- Obstruct the delivery of an advance ballot to the voter or obstruct the return of the voted ballot to the county election officer
- Fail to deliver or mail an advance ballot to the county election officer within two days or before the close of polls on election day, whichever occurs first
- Exercise undue influence on an advance voter in applying for, delivering or marking a ballot
- Open an advance ballot envelope sealed by the voter, examine or disclose its contents except as required in performing official election duties

There are some statutes that apply only to election officials. For example, no election official may accept a bribe in exchange for the improper performance of election duties. [KSA 25-2418] Election officials are prohibited from intentionally inducing a voter to vote contrary to that voter's inclination, changing the vote of a voter, or preventing a qualified

voter from voting. [KSA 25-2419] No election official may intentionally hinder, prevent or defeat a fair election by fraudulent means, such as accepting votes from unqualified voters or any voter who has already voted in that particular election, receiving or counting any ballot which is fraudulent, counterfeit, or illegal, or declaring any false election result. [KSA 25-2420] Election officials are prohibited from election suppression, which is suppressing or failing to file nomination papers, petitions or certificates of nomination. [KSA 25-2421] It is unlawful for any election official to expose, or to induce any voter to disclose, the manner in which a ballot was marked. [KSA 25-2422]

The election crime statutes also prohibit anyone from engaging in disorderly conduct near any voting place on election day or during advance voting, and from threatening or otherwise intimidating voters. [KSA 25-2413, 25-2415]

One of the more significant election crime statutes involving election day activities is the electioneering statute. It is a crime to campaign within 250 feet of the entrance of a polling place or an advance voting site. Campaigning refers to attempts to persuade voters to vote one way or another, including the wearing of buttons and clothing bearing political campaign slogans or names of candidates. [KSA 25-2430]

In addition, there are various statutes not specific to election laws that may be relevant in certain election-related situations, such as statutes prohibiting false writings or signing false oaths or affidavits.

### **Investigation and Prosecution**

Because elections are conducted at the local level of government, illegal acts are normally prosecuted by the county or district attorney. A person who alleges criminal activity may make a report to the local law enforcement officials (police, sheriff or county/district attorney) and present facts and evidence for the county/district attorney to consider in deciding whether to prosecute. Sometimes the Attorney General may be notified of situations, and the Kansas Bureau of Investigation may be directed by the Attorney General to investigate and collect evidence for possible prosecution.

The Secretary of State has no statutory authority to conduct official investigations or to initiate prosecutions, but the office often works with county election officers, other local officials and members of the voting public to make unofficial inquiries and collect information which may be used by local prosecutors or the Attorney General in deciding whether to prosecute.

### **Crimes Cited in Election Laws**

Following is a list of crimes specified in the election laws, Chapter 25 of the Kansas Statutes Annotated.

Corrupt political advertising	25-2407
Publishing or broadcasting campaign materials without sponsorship attribution	
Bribery	25-2409

Offering, conferring, soliciting or accepting a benefit for voting, not voting or voting a certain way	
Bribery to induce signing of nomination papers	25-2410
Offering or accepting a thing of value for signing a nomination paper	
Election perjury	25-2411
Falsely swearing or declaring in response to questions asked of challenged voter, questions asked of a witness, statements in an affidavit prescribed by Chapter 25 or the SOS or CEO, questions asked by CEO related to voter registration, questions asked by election board member related to physical or language disability statements by a witness in an election contest.	
Election forgery	25-2412
Knowingly signing another person's name to a certificate, nomination paper or petition	
Marking a person's ballot without consent	
Marking a person's ballot contrary to their direction.	
Disorderly election conduct	25-2413
Disturbing the peace at a polling place	
Leaving with a ballot	
Approaching nearer than 3 feet from voting booth or voting machine unless voting	
Interrupting, hindering or obstructing a voter	
Soliciting contributions within 250 feet of a polling place	
Conducting advisory elections within 250 feet of a polling place unless under home rule	
Possessing false or forged election supplies	25-2414
Possessing altered or counterfeit poll books, tally lists or election returns	
Intimidation of voters	25-2415
Intimidating, threatening or coercing a voter to induce them to vote a particular way or	

to not vote	
Mailing, publishing, broadcasting, telephoning false information to keep voters from voting	
Voting without being qualified	25-2416
Voting when not registered	
Voting more than once	
Inducing someone to vote more than once	
Bribery of an election official	25-2417
Offering or conferring a benefit to an election official to influence them to perform duties improperly	
Bribe acceptance by an election official	25-2418
Election official's acceptance of a benefit for improper performance of duties	
Misconduct of an election officer	25-2419
Gross neglect	
Misinforming a voter of a ballot's contents to induce them to vote contrary to inclinations	
Changing a voter's ballot	
Permitting a person to testify or make an affidavit contrary to law	
Preventing a qualified voter from voting	
Refusing to receive the vote of a qualified elector	
Election fraud by an election officer	25-2420
Receiving a vote from an unregistered or unqualified voter	
Receiving a vote from a person who has previously voted	
Possessing altered or counterfeit poll books, registration books, party affiliation lists, election abstracts or election paper	
Receiving or counting fraudulent, counterfeit or illegal ballots	
Issuing a fraudulent or false certificate of nomination or election	
Declaring a false election result	
Declaring election results based on fraudulent or illegal votes	
Entering the name of a person not qualified to vote on a poll book, registration book	

or party affiliation list	
Entering the name of a person who has not voted on a poll book, registration book or party affiliation list	
Election suppression	25-2421
Suppressing a duly filed nomination certificate or petition	
Possessing a nomination certificate or petition and neglecting to file at proper time	
Voter registration suppression	25-2321a
Destroy a VR application	
Obstruct delivery of VR application to election office	
Fail to deliver VR application to election office	
Unauthorized voting disclosure	25-2422
Disclosing the contents of a ballot	
Inducing a voter to show how he has voted	
Election tampering	25-2423
Making or changing an election record when not charged with official duties	
False impersonation as party officer	25-2424
Representing oneself as a party officer to deceive any person or to influence an election	
Voting machine fraud	25-2425
Unauthorized possession of a key	
Tampering with, altering or destroying a machine, ballot or record	
Printing and circulating imitation ballots	25-2426
Printing and circulating sample ballots other than official sample ballots	
Marking ballots to identify	25-2427
Marking, folding or clipping ballots to distinguish	
Destruction of election supplies	25-2428
Destroying or defacing candidate lists, sample ballots or election supplies	
Destruction of election papers	25-2429
Destroying nomination certificates, papers or	

candidate withdrawal letters

Electioneering	25-2430
Attempt to persuade votes for or against a candidate or question	
At polling place or within 250 feet of entrance	
Includes advance voting sites	
Includes clothing but not bumper stickers	
False impersonation of a voter	25-2431
Representing oneself as another and attempting to vote	
Advance voting suppression	25-2433
Knowingly attempt to destroy or alter a voter's advance ballot	
Obstruct delivery of ballot to voter or to election office	
Fail to deliver ballot within 2 business days	
Exercise undue influence on an advance voter	
Open a ballot envelope to examine or disclose the ballot's contents	
Violation of campaign finance requirements	25-902, 25-905
Marking advance ballot for voter	25-1124(a)
Failure to sign advance voting affidavit of assistance	25-1124(c)
Exercising undue influence on assisted advance voter	25-1124(c)
Marking/transmitting more than one advance ballot	25-1128(a)
Corporations-failure to comply with campaign finance	25-1710
False declaration of presidential voter	25-1806a
False statement on voter registration application	25-2309(a), (b)(11)
False affidavit on voter registration to obtain ballot	25-2316a
Unlawful marking/mutilation of ballot	25-2902(a)
Erasure of mark or name written on ballot by voter	25-2902(a)
Deposit or count of unlawful ballots	25-2906

Unlawful removal of ballot from voting place	25-2907
Electronic voting machine fraud	25-4414
Unauthorized possession of voting equipment, computer programs, software or ballots	
Tampering with, altering, destroying a voting system or ballot	
Optical scan equipment fraud	25-4612
Unauthorized possession of ballots, optical scan equipment, computer programs, software	
Tampering with, altering, destroying optical scan equipment, software or ballots	

**Legal References**

KSA 25-2407 through 25-2432

#### **h. Election Records and the Kansas Open Records Act**

All election records produced and maintained by the county election officer are presumed to be open under the Kansas Open Records Act (KORA) unless they are specifically closed by a statute or fall under one of the exceptions to KORA.

In some cases a request for a record that is being used for an official purpose may be postponed, as in the case of requests for copies of poll books before completion of the county canvass. In such cases accessing the records may interfere with completion of the official duties for which they are needed. The KORA requires the county election officer to respond to the requestor as soon as possible and not later than three business days following the request. If the records cannot be provided immediately notice should be given outlining the reason for the delay (i.e., the records are in use for the canvass) and the time and date the records will be available.

Lists of advance voters, poll books and registration books are records maintained by the county election officer, and no statute closes them; thus, they are open records. In fact, KSA 25-2320 specifically designates registration books as open records, requiring they be open to the public for inspection and copying. The Attorney General has informally opined that the definition of registration books includes poll books. Note that Social Security numbers, driver's license numbers and nondriver's ID card numbers listed on voter registration cards are required to be kept confidential; therefore this information must be redacted before providing copies to the public. Additionally, any documentation submitted as evidence of U.S. citizenship for registration purposes is also confidential. [KSA 25-1126, 25-2320, 25-2507]

Poll books were at issue in the 2004 primary election during the county canvassing process, and the Attorney General and Secretary of State agreed that requests for poll books and registration records may be postponed until after the canvass if accessing those records interferes with the canvassing process.

Provisional ballot envelopes have been requested before completion of the canvass by persons considering contesting the results of elections. No statute clearly states whether envelopes are open or closed records, but the procedures given in statute for processing provisional ballots result in closing the envelopes from public inspection. Provisional ballots are enclosed in envelopes at the polling place, and the envelopes are placed in bags or sacks and delivered to the county election office. They may be used before or during the canvass for purposes of determining the ballots' validity. They are not accessible for public inspection unless a court orders them opened for a contest or other court proceeding. [KSA25-409, 25-3008, 25-3107]

The issue of whether voting records are open records may change in cases where the record reveals the voter's choices on the ballot. For example, if only one voter voted a provisional ballot in a given precinct, and that ballot decided the outcome of a race, disclosing the record (the provisional ballot envelope) would inform the public of that voter's vote. If releasing a record would disclose a voter's votes, the election officer may consider closing the record. Although voting records are open under Kansas statutory law, the right to a secret ballot is protected under the United States and Kansas

Constitutions. If disclosing an otherwise open record has the effect of disclosing the voter's vote, the election officer must weigh the constitutional right to a secret ballot against the public's statutory right to open records. [Burson v. Freeman, 504 U.S. 191, 112 S.Ct. 1846 (1992); Sawyer v. Chapman, 240 Kan 409 (1986)]

## **i. Geography**

In all aspects of election administration, it is necessary for the county election officer to keep track of key geographic entities. The election officer has statutory responsibility for keeping track of precincts within the county, but also the boundary lines for all other jurisdictions where election activities occur.

### **1. Census**

Every 10 years, the United States Census Bureau conducts a count of every person currently residing in the United States. The purpose of the census is to collect accurate, reliable data that may be used by national, state and local governments to distribute billions of dollars in federal funds, to determine the number of members each state is entitled to in the U.S. House of Representatives, and to provide population counts for use in redrawing congressional and state legislative district boundaries.

Kansas is the only state that also has a census adjustment. The Secretary of State's office conducts a mini-census of all college students and military personnel who are in Kansas and then adjusts them to their permanent residence if it differs from their current location where they were enumerated by the U.S. census. This adjustment produces a set of recalculated population data used only for the purposes of redistricting for the Kansas House, Kansas Senate, and Kansas State Board of Education. [Kansas Constitution, Article 10, Section 1]

### **2. Precincts/VTDs**

Each county is composed of geographic entities called precincts or VTDs. VTD is a U.S. Census Bureau term that stands for vote tabulation district. The precinct is the base unit for conducting an election. Each county commission, state legislative and U.S. legislative district is composed of precincts. Election precincts are established or changed by the county election officer. [KSA 25-26a02] First and second class cities are authorized to set their own ward boundary lines, but not precinct lines. Precincts may be established or changed due to annexations, changes in ward boundaries or changes to reflect population shifts.

Each precinct must fit all of the following criteria:

- must be contiguous
- must be compact
- must use boundaries that have visible ground features that coincide with census block boundaries
- must be contained entirely within any municipal, township or county district.

[KSA 25-26a02]

A precinct may not lie in more than one legislative, county commission, township or municipal district. [KSA 25-26a02]

A precinct may also be an exclave or an enclave. An exclave is an area of a municipality that is not contiguous with the rest of that municipality. An enclave is an area of a township that is not contiguous with the rest of that township.

There are statutory “freezes” when no precinct lines are allowed to be created, divided, abolished, consolidated or otherwise changed except for specific reasons provided for in law, such as city annexations. One such freeze exists between January 1 of the seventh year of each decade and December 1 of the second year of the following decade. The period spans the time before and after each decennial federal census and the subsequent redistricting process and election. [KSA 25-26a03]

Another freeze exists for the four months immediately preceding any primary election until the day after the succeeding general election.

There are four exceptions to the freeze.

- New precincts may be created if required by the creation of a political subdivision.
- New precincts may be created or altered if an annexation occurs.
- New precincts may be established if they lie entirely within the boundaries of any existing precinct.
- Precinct lines may be altered to conform or coincide with a federal census block boundary. [KSA 25-26a03]

Each county election officer also has other statutory duties regarding geography. Each county election officer must maintain suitable maps that show the current geographical boundaries of each election precinct, representative district and senatorial district in the county. The names of the features, including municipal boundaries, must be clearly shown on the maps. The names or designations of the precincts must be marked on the maps. Each county election officer is required to send a copy of the maps to the Secretary of State. The county election officer must also notify the Secretary of State in writing at least 30 days before any change of an election precinct becomes effective.

The Secretary of State’s office maintains a database of every election precinct in the state. The office assigns a VTD number to every precinct. When a precinct is created or altered, the Secretary of State will assign a new VTD number to that precinct. Abstracts of votes cast and statements of voter registration must be submitted by precinct, with VTD code numbers included.

### **3. Annexations**

Cities have constitutional and statutory authority to annex land. [Kansas Constitution, Article 12, Section 5; KSA 12-517 et seq.] When an annexation ordinance is passed and published by the city, the city clerk must file a certified copy with the county clerk or county election commissioner. If the annexation ordinance is published within 60 days before primary/general national/state/city/school elections, the annexation does not take effect until after the election. This does not apply to any special election.

#### **4. Redistricting**

Every 10 years in the second year of the decade (the year ending in 2), the U.S. House of Representatives district lines are redrawn based on the latest U.S. Census figures. Currently, Kansas has four U.S. Representative districts. The state legislature is responsible for the drawing of the boundary lines. At the same time each decade, the Kansas Senate, Kansas House of Representatives, and Kansas State Board of Education district lines are redrawn based on the latest U.S. Census figures that have been adjusted by the Kansas Secretary of State's office. There are 40 Senate seats, 125 Representative seats and ten State Board of Education seats. Each Board of Education district is comprised solely of four contiguous state Senate districts.

In redistricting years, (the second year of the decade), the legislature passes legislation defining the boundary lines of the U.S. House, Kansas Senate, Kansas Representative and State Board of Education districts. If the governor approves the redistricting plan, he/she signs the bill into law and it is published in the *Kansas Register* immediately upon final passage. Within 15 days after the publication, the Attorney General petitions the Kansas Supreme Court to determine the validity of the boundary lines for Kansas House and Senate districts. The Supreme Court must enter its judgment within 30 days of receiving the petition. If the Supreme Court determines the reapportionment is invalid, the legislature must enact a new bill within 15 days. [Kansas Constitution, Article 10, Section 1]

County commission districts are subject to alteration at least once every three years. The commission districts must be as compact and equal in population as possible. [KSA 19-204; Attorney General Opinion 2002-12] The board of county commissioners must use the most recent population figures available from the U.S. Bureau of the Census as certified to the Secretary of State by the Division of Budget on July 1 each year. Alternatively, the board of commissioners may rely on the population figures derived through an actual census of the county conducted by the county pursuant to K.S.A. 11-202, but no county has done its own census in recent years. [AGO 91-149]

First class city ward lines are subject to alteration pursuant to their charter ordinances. There is no state law that governs the establishment or redrawing of these lines. Second class city ward lines are established by the city council and should be as equal in population as practicable. The territory of each ward must be contiguous and compact. [KSA 14-207]

### **j. Other Local Units of Government**

The elections for national, state, county, township, city and school board offices receive the most attention from the public, but the county election officer is also involved in election-related activities with many other units of local government.

Following is a list of these units of government, although this list is not exhaustive:

Drainage districts	KSA 24-401 et seq.
Extension councils	KSA 2-608 et seq.
Fire districts	KSA 19-3601 et seq.
Fire protection benefit districts	KSA 31-301 et seq.
Hospital districts	KSA 19-4601 et seq.
Irrigation districts	KSA 42-701 et seq.
Library districts	KSA 12-1219 et seq.
Recreation commissions	KSA 12-1922 et seq.
Rural water districts	KSA 82a-601 et seq.
Water districts	KSA 19-3501 et seq.
Watershed districts	KSA 24-1201 et seq.
Cemetery districts	KSA 15-1015, 12-1414

The county election officer may be involved with any of the following occurrences with these local units of government:

- Petitions
- Election of officers
- Question submitted elections
- Filing oaths
- Filling vacancies

A given county might not contain all of the governmental entities listed here, but all counties have some of them. In any dealings with these entities, specific statutes governing their activities must be consulted before taking action.

## **k. Help America Vote Act of 2002**

The Help America Vote Act of 2002 (HAVA) is the second significant federal law passed in a decade affecting the electoral process. The first was the National Voter Registration Act of 1993 (See Chapter I, Section h.). The NVRA was designed to increase voter registration opportunities, increase the number of registered voters, and improve the accuracy of voter registration lists by tracking voters' address changes.

HAVA was designed to improve election administration procedures, increase accessibility to the voting process, and improve voters' and election administrators' knowledge to increase the likelihood that each ballot cast will be valid.

The major provisions of HAVA may be separated into three categories:

### **1. Improving Election Administration**

#### **(a) Election Assistance Commission (EAC)**

At the federal level, the most noticeable change is the creation of a new, permanent federal agency to oversee and provide assistance to the states in election administration.

(1) The EAC is composed of four commissioners appointed by the President and, among other things, assumes the duties of the former Office of Election Administration in the Federal Election Commission.

(2) The EAC is assisted by the Election Assistance Commission Standards Board, half of whose 110 members are chief state election officials or their designees, while the other half are local officials appointed by the state election officials. The Standards Board reviews voluntary voting system guidelines and assists states in meeting federal requirements related to voting equipment and election day activities. The Standards Board also appoints a nine-member Executive Board.

(3) HAVA created a 37-member Election Assistance Board of Advisors to establish voting system guidelines. Members are representatives of various governmental agencies and private organizations concerned with elections.

(4) A Technical Guidelines Development Committee composed of 15 members was created to assist in the development of voluntary voting system guidelines.

#### **(b) State level authority**

HAVA represents a shift of authority in election administration from counties/localities to the states. Some of the duties of states are:

(1) State plan—The state must adopt, publish and file with the federal government a state plan detailing how it will meet the requirements of HAVA. An advisory council was required to be consulted in the development of the plan. The plan is reviewed and revised annually.

(2) Centralized voter registration (CVR)—The state was required to establish a “single, uniform, official, centralized, interactive, computerized, statewide voter registration list, defined, maintained and administered at the state level.” This requires the conversion of the existing statewide database into a much more automated and integrated system that is defined, purchased and operated by the state.

(3) Administration of funding—The state receives federal funding, makes purchases, distributes funding or equipment to the counties, applies for federal grants for specific purposes, and oversees distribution of grant money to counties.

(4) What constitutes a vote—The state formally defines what constitutes a vote, how to canvass questionable ballots, how to determine voter intent, and how to determine whether a provisional ballot is valid.

(5) Complaint procedure—The state establishes a formal administrative complaint procedure that allows anyone to file a complaint about a violation of voting rights that has occurred, is occurring, or is about to occur. The complainant has the right to a public hearing, and the Secretary of State or other officer hearing the complaint may provide remedies or direct others to provide them.

(c) Changes at the precinct level—

HAVA authorized a college poll worker recruitment program to assist county election officers in finding capable poll workers. The Election Assistance Commission has authority to design the program.

Poll workers are required to obtain more and better training due to HAVA requirements.

(d) Federal services voters—

Two changes were brought about by HAVA to better serve federal services voters:

(1) The ballot application filed by a federal services voter is good for all elections from the time of the application through the end of the calendar year.

(2) A single authority is designated by the state to disseminate information and handle inquiries regarding federal services voting.

(e) Education and training—

Efforts to train and educate election officials and voters are increased with more involvement by the state under HAVA. The state also provides financial assistance. These programs break down into several areas:

(1) CEO training—The state adopts curriculum and organizes required training sessions to improve county election officers' knowledge of elections. Materials and reference guides are provided by the state.

(2) Poll worker training—County election officers train their poll workers. However, poll worker training is required and is more uniform than before. The state provides materials to be used by the county election officer, who may also adapt the materials to fit the specific needs of the county.

(3) Voter education—This area breaks into two parts:

- Voter education before the election, including get-out-the-vote programs and information on how voters may register and vote.
- Voter education at the polls, including the correct procedure to use in voting, information about the voting equipment used in the county, how and why to vote a provisional ballot, and how to make sure the ballot is valid.

(f) Youth programs—

HAVA emphasizes youth voting programs in an attempt to increase participation by young adults, who traditionally vote in low percentages. States are encouraged to coordinate with groups such as the National Student Parent Mock Election and Kids Voting to accomplish this goal.

(g) Voting procedure

(1) Provisional voting is required with HAVA, although Kansas adopted full provisional voting with implementation of NVRA. Further, provisional voters are required to sign a special affidavit, and election officers are required to provide provisional voters with free access to information about whether their ballots counted.

(2) Voter identification is required by HAVA for first-time voters who registered by mail. These individuals have never personally appeared before an election officer during the registration and pre-election process, so the possibility of election fraud is greater with this group than with other groups. HAVA therefore requires these voters to provide identification before receiving a ballot. Identification may be a picture identification such as a driver's license, government check, passport, utility bill or other valid form of identification as prescribed by federal or state law. These are the minimum requirements in HAVA. States are allowed to establish identification laws more strict than HAVA, but not contradictory to HAVA.

Note: Beginning in 2012, Kansas law expanded the policy of voter identification to require every voter to provide photographic identification each time he or she votes.

## **2. Improving Accessibility—machines & polling places**

In HAVA, accessibility means access to the polling place and to the ballot or voting equipment.

(a) One portion of HAVA federal funding is intended to be used to provide new voting systems in precincts which formerly used punch cards or lever machines. This provision does not affect Kansas because punch cards have never been used in the state and no lever machines have been used since the mid-1990s.

(b) Each polling place is required to have an electronic voting machine equipped to allow disabled voters, including visually impaired voters, to vote in secret. Under previous state laws disabled voters needed assistance in voting because no voting system in use allowed them to vote unassisted. HAVA requires unassisted voting, which usually means an audio ballot component is added to an electronic voting machine, allowing the voter to hear the choices and select his/her choices by pressing a button.

(c) HAVA requires ADA compliant polling places and provides some funding in the form of grants to states which can be distributed to counties to make improvements to polling places that do not comply with the requirements of the Americans with Disabilities Act.

## **3. Financing Election Reform**

HAVA authorized, but did not appropriate, funding in the amount of \$3.9 billion over a period of four years to assist states and localities in making the necessary changes in election administration. Congress appropriated funds in 2003 and 2004, a total of approximately \$3 billion. The funds are distributed to the states in several parts.

(a) Title I—This is money distributed to states on the basis of their voting age population with a minimum of \$5 million per state. Kansas received \$5 million.

(b) Title II—These funds are intended to help pay the costs of election administration improvements required by Section 3 of HAVA. Kansas' share was approximately \$7.5 million the first year and \$13.4 million the second year.

(c) Grants—Various federal grants are available, including those for youth voting programs, college and high school poll worker recruitment, and ADA accessible polling places.

Any entity, state or county, that receives federal funding must:

- certify it will use the funds for HAVA-related activities
- comply with maintenance of effort requirements, meaning past levels of government spending on election administration may not be reduced when federal funds are received,
- provide a 5% match of federal Title II funds, and
- comply with federal auditing requirements.

Kansas' formula for providing the matching funds is for the state legislature to appropriate 3 of the required 5% and the counties to collectively provide the remaining 2%.

### **I. Secure And Fair Elections (SAFE) Act**

The SAFE Act, passed in 2011, made significant changes to the voter registration and voting processes in Kansas.

The Act contains the following major parts:

- U.S. citizenship verification—

Beginning January 1, 2013, each new voter registration applicant must provide evidence of U.S. citizenship when registering to vote.

Persons already registered to vote are exempt.

Persons who need copies of birth certificates for registration purposes may obtain them free from the Office of Vital Statistics in the Kansas Department of Health and Environment by signing a statement that they intend to use the copies for voter registration purposes.

(See also Chapter I, Section c.)

- Photo ID when voting—

Beginning January 1, 2012, each voter must show government-issued photo identification every election.

By-mail advance voters may provide their full driver's license/nondriver's ID number or a photocopy of a photo ID document.

Certain persons are exempt from the photo ID requirement:

- Permanent advance voters
- Overseas and domestic military personnel, their dependents, and overseas civilians voting under UOCAVA. \*
- Any voter whose religious beliefs prohibit photographic identification. Such persons must sign declarations and file them with the CEO or SOS to be exempt.

Persons who do not have photo identification may obtain free nondriver's identification cards from the Division of Motor Vehicles by signing a statement that they intend to use the ID for voting purposes.

Persons who were born in Kansas, do not have a "proof of identity" document acceptable to the Division of Motor Vehicles, and do not have qualifying photo identification may obtain a birth certificate at no cost to them from KDHE.

Persons who were not born in Kansas, do not have a "proof of identity" document acceptable to the Division of Motor Vehicles, and do not have qualifying photo identification may obtain a photo identification document from the Secretary of State's office.

Note: The photo ID requirement does not apply to mail ballot elections conducted pursuant to KSA 25-431 *et seq.*

\* These exemptions are found in Sec. 11 of SAFE, which is KSA 25-2908(i). Note that all categories of UOCAVA voters *except* overseas civilians (non-military persons) are listed as exceptions to the voter ID requirement. But all of these categories of UOCAVA voters are exempt from voter ID *if they are voting UOCAVA ballots*. State law requires photo ID of all voters, whether they vote in advance or at the polling place on election day. The same state law exempts military and their dependents from photo ID but does

not exempt overseas civilians. Thus, military and their dependents are exempt from photo ID whether they're voting at the polling place, voting Kansas advance ballots, or voting UOCAVA ballots.

Overseas civilians are *not* exempt from photo ID if they're voting Kansas advance ballots. They are exempt from photo ID only if voting under UOCAVA. If a CEO receives an application (Form AV1) for a regular advance ballot (not a UOCAVA ballot) from a civilian living overseas, the CEO should encourage the person to apply for a UOCAVA ballot using an FPCA. There are three advantages for an overseas civilian in voting a UOCAVA ballot instead of a regular advance ballot: (1) They do not have to comply with the photo ID requirement. (2) They can receive their ballot earlier. (3) They have more options for receiving and returning their ballot (fax, email or other electronic means authorized by the Secretary of State).

(See also Chapter II, Section c.)

- Advance ballot security—

The ballot sent by mail represents the only time a ballot is not in custody of an election officer or poll worker. Several provisions in the SAFE Act are intended to establish more control and to create a custody trail of mailed ballots.

- No one may sign a ballot application for another person, except for persons with disabilities who cannot sign their names.
- If a voter has received an advance ballot by mail and wishes to direct another person to mail or deliver the ballot to the election office, the voter must designate the delivery person *in writing*. Previous law allowed the voter to designate someone to mail or deliver but did not require the designation in writing.
- The designated ballot delivery person must sign a statement saying that he/she
  - (a) has not exercised undue influence on the voter, and
  - (b) agrees to deliver the ballot as directed by the voter.

Other provisions of SAFE:

- CEOs verify signatures and driver's license numbers on by-mail advance ballot applications.
- CEOs maintain confidentiality of driver's license numbers and proof-of-citizenship documents.
- Poll workers verify photo IDs of voters.
- County commission designates an office in the county to assist individuals in requesting free birth certificates from the state Office of Vital Statistics.
- CEOs participate in voter education programs in their respective counties.
- All government offices provide free photocopies of ID documents for voters who need them.
- Persons who do not possess a valid document proving U.S. citizenship may appeal to the state election board.
- The county canvass dates are moved to either the Monday following the election or the second Thursday following the election.
- Deadlines to request recounts are moved in accordance with the new county canvass dates.

**m. Alternative and Substitute Signatures**

Most political actions by a citizen involve a signature. The signature is the basis for the security of the ballot and for determining whether people are who they say they are. Election officials, including election board workers in some cases, often find themselves in situations where they must determine whether a signature is valid.

For some voters, however, applying a signature to a document is not as simple as for others. Some individuals may be physically unable to sign, or their signatures may change over time, so questions may arise as to the authenticity of their signatures.

It is important for election officers to know the rules to apply in two categories:

- determining the validity of an alternative signature provided by a voter him/herself, and
- determining whether a substitute signature provided for a voter by another person is authorized.

The following chart provides information on the statutory rules governing alternative signatures for five common situations occurring in the election process.

**Rules for Alternative and Substitute Signatures**

SITUATION	LEGAL AUTHORITY	COMMENTS
<b>Signature on...</b>		
Voter registration application	KSA 25-2309(a)	Signature may be made by mark, initials, typewriter, print, stamp, symbol or other manner if by placing signature on document the person intends the signature to be binding. Signature may be made by another person at the voter’s direction if signature reflects such voter’s intention. Power of attorney included but not required.
Advance ballot application	KSA 25-1122(a) KSA 25-1128(d) Attorney General letter to Secretary of State, September 16, 1997	Person must sign for him/herself. Another person who has signed an affidavit of assistance may assist a person with an illness or disability in completing application and may sign for the voter.
Advance ballot return envelope	KSA 25-1120 KSA 25-1124(a), (d), (e) KSA 25-1128(d)	Advance voter must sign affidavit on envelope. Another person who has signed an affidavit of assistance may assist a person with an illness or disability in “applying for or marking an application or advance voting ballot.”
Poll book	KSA 25-2908(b)(3) KSA 25-2909(a) KSA 25-2911	(Same as voter registration application) Signature may be made by mark, initials, typewriter, print, stamp, symbol or other

		<p>manner if by placing signature on document the person intends the signature to be binding.</p> <p>Signature may be made by another person at the voter's direction if signature reflects such voter's intention.</p> <p>Power of attorney included but not required.</p>
Petition	<p>KSA 25-205(b), (c)</p> <p>KSA 25-3602(b)(3)</p> <p>KSA 25-3604</p> <p>KSA 25-4310 (recall)</p>	<p>Statutes governing various types of petitions require petition signers to sign their own names. No authority exists in the petition laws for alternative forms of signatures or for any person to sign for another.</p>