



CHRISTI JACOBSEN
MONTANA SECRETARY OF STATE



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Ravalli County Commissioners

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Ravalli County Board of County Commissioners
215 S 4th St, Suite A
Hamilton MT 59840

Dear Ravalli County Board of Commissioners:

Thank you for your letter which highlights the collaboration and passion displayed by Ravalli County toward protecting Montana’s elections. Serving as your Chief Elections Officer is truly an honor.

Ravalli County has accomplished something that must be recognized – bringing to the table a Clerk and Recorder, county attorney, county commissioners and administrators, state legislators, representation from both major parties’ central committees, aspiring candidates, and members of the public together with a shared commitment to preserving the sanctity of our state’s right to vote.

Although everyone did not agree on everything, in the end, a collective decision was made to see how you could do your part, headquartered in the beautiful Bitterroot, to ensure the purity of elections, and enhance the trust in the electoral process for your community.

The aspiration by Bitterrooters to work together to identify solutions and make Ravalli County a model for other counties across the state is outstanding. Our Founding Fathers, for good reason, established a system that curbs against top-down control in Government. For the same reason, states should not seek top-down permission from the federal government; local government power and control within our state must be preserved and respected.

While our citizen-legislature meets every two years to discuss statewide laws, the remainder is rightfully left to local governments. What is good for Helena is not necessarily good for Wisdom. What is good for Wisdom is not necessarily good for Missoula. What is good for Missoula is not necessarily good for Corvallis. What is good for Washington D.C. is not necessarily good for Montana. The bottom line is local control is best.

The collaborative idea for a local audit as outlined in your letter is creative and intriguing. Such a proposal would be an area worthy of consideration by the legislature as part of the larger reform I will be requesting related to Montana’s election audits.

It was great to hear commitment from Election Administrator Regina Plettenberg to be a voice in Helena for election security bills. My office led the charge for a commonsense voter ID requirement and

registration deadlines in the last session. It will be wonderful to have Regina join us in sharing the importance of orderly, secure, and trustworthy elections.

The proposal outlined by your letter is for an audit outside of the one prescribed by Title 13 (the Secretary's jurisdiction), during a Title 7 election (outside of the Secretary's jurisdiction). Title 7 elections may not conflict with Title 13. But Title 13, as recognized by your County Attorney, does not provide for the process in which you have outlined, nor does the process you have outlined conflict with the process in Title 13. Both must be considered.

At the same time, the rulemaking authority provided to the Secretary of State by the Postelection Audit Act is limited to implementation of the Postelection Audit Act. 13-17-503(6) ("This part"). As you indicated, Part 5 does not speak to a local audit performed on a local election.

Your county governance was right to say that this appears a bit like writing state laws outside of the legislative process. It is concerning when government acts beyond the authority of its laws. However, it would be inappropriate to tell Ravalli County what is within the authority of its laws.

As noted by your letter, 13-1-303, MCA provides:

13-1-303. Disposition of ballots and other election materials. (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official either for a recount procedure or to process provisional ballots.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

(i) contest begun;

(ii) recount pending; or

(iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-1201.

Your letter indicates that the Secretary is the proper official under subpart (a), which is incorrect. The Secretary is not the proper official to order either a recount procedure or to process provisional ballots. The determination of the proper official under (a) is left to the County Attorney. While the proper official could be a magistrate, the proper official could not be the Secretary for either of those purposes. The Ravalli County Attorney may want to look at other instances where counties have obtained authorization from a magistrate under this provision. There are at least two recent instances in which the election administrator authorized unsealing election material for a county-led examination process. The Secretary of State did not receive a request for authorization, or ultimately authorize, the unsealing of election materials performed. It would be improper to opine as to what process was used in those two instances and whether they were lawful.

In addition, the process described by your letter falls outside of what is authorized by (a). Your letter references the process authorized by (b) ("The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines."). Obviously, subpart (b)'s authorization includes unsealing the ballots for the process detailed by Title 13, Chapter 17, Part 5. Whether or not the authorization in (b) extends to the county for a postelection random-sample audit in the manner proposed by the county, outside of Title 13, is ultimately a decision for the County Attorney.

The Secretary of State lacks the authority to approve or disapprove of the proposed plan. Allowing decisions to be made by government actors beyond their authority is the definition of big government out of control. I despise big government.

In regard to the State Canvass, everyone is invited to the Capitol for the selection of the random-sample audit. The Ravalli County press is also invited to this important event. Commissioner Burrows' concerns expressed during the Commissioner meeting about weighted dice have been noted. It is important to understand the process is random and does not even allow the Secretary to participate, only the other canvass board members who consist of the Attorney General, the State Auditor, and the Superintendent of Public Instruction. Additionally, they must rotate staff. The postelection audit is a key process for ensuring integrity in our elections and is directly in line with the Commission's expressed desire to "Trust but verify."

Thank you for reaching out, my doors are always open.

With liberty,



CHRISTI JACOBSEN
Secretary of State