



OFFICE OF THE ARIZONA ATTORNEY GENERAL

October 19, 2015

C.H. Huckelberry  
County Administrator  
Pima County Governmental Center  
130 W. Congress, Floor 10  
Tucson, AZ 85701-1317

Dear Mr. Huckelberry,

You requested a formal opinion from this Office, asking whether it would violate A.R.S. § 16-602(B)(2)(f) to conduct a hand count of Pima County's November 3, 2015 bond election, the City of Tucson's mayor and city council elections, and the Town of Oro Valley's recall election. As you may be aware, our formal opinion process necessarily involves several layers of review and is not, therefore, conducive to a speedy turnaround. We understand time is of the essence regarding your request, at least in part because the Pima County Board of Supervisors is holding its final pre-election meeting this week and would like to consider this office's opinion on the question presented. For these reasons, we offer the following informal opinion regarding the applicability of A.R.S. § 16-602(B)(2)(f) to the upcoming elections: Pima County would not violate A.R.S. § 16-602(B)(2)(f) if it were to conduct a hand count of the races in question because (1) any hand count of these races would be outside the scope of A.R.S. § 16-602 and (2) A.R.S. § 16-602(B)(2)(f) does not affirmatively bar hand counts outside the scope of the statute.

A.R.S. § 16-602(B) applies to "*countywide* primary, special, general and presidential preference election[s]." (Emphasis added). Further, as part of the triggered A.R.S. § 16-602 hand count, the county official in charge of elections is instructed to count selections from the following categories of contested races: statewide ballot measures, races for statewide office, races for federal office, and races for statewide legislative office.<sup>1</sup> A.R.S. § 16-602(B)(a)-(e). If

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<sup>1</sup> Although it is possible to read ambiguity into whether A.R.S. § 16-602(B) intends to include only statewide ballot measures or statewide and local ballot measures, we believe the context of A.R.S. § 16-602(B) counsels in favor of the statewide ballot measure interpretation. The structure of A.R.S. § 16-602(B)(2) suggests that ballot measure in A.R.S. § 16-602(B)(2)(e) refers to the statewide ballot measures in A.R.S. § 16-602(B)(2)(a), as does the use of the modifier "additional" in A.R.S. § 16-602(B)(2)(e). This approach is also consistent with the approach taken in the Election Procedures Manual. *See* State of Arizona's Election Procedures Manual at 193 (2014); *see also* A.R.S. § 16-602(B) ("The hand count shall be conducted as prescribed by this section and in accordance with hand count

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there are no contested races from these categories in a particular precinct, A.R.S. § 16-602(B)(2)(f) instructs the county official in charge of elections not to conduct an A.R.S. § 16-602 hand count in that precinct. Under this analysis, none of the elections at issue would trigger a full A.R.S. § 16-602 hand count.

Further, A.R.S. § 16-602(B)(2)(f) does not affirmatively bar hand counts outside of A.R.S. § 16-602. That section only provides instructions for the county official in charge of elections on what races to count in an A.R.S. § 16-602 hand count. *See* A.R.S. § 16-602 (“The hand count shall be conducted in the following order”); A.R.S. § 16-602(B)(2) (“The races to be counted on the ballots from the precincts that were selected . . . shall include up to five contested races . . . as follows”); A.R.S. § 16-602(B)(2)(f) (“If there are no contested races as prescribed by this paragraph, a hand count shall not be conducted *for that precinct* for that election.”) (emphasis added).

Please note this informal opinion does not address any of the following issues: (1) the source of Pima County’s authority, if any, for a hand count outside the scope of A.R.S. § 16-602 for the races in question, (2) the procedures the County should use for any hand count since A.R.S. § 16-602 would not apply, and (3) what effect, if any, a hand count outside of A.R.S. § 16-602 would have on the official outcome of the election.

Sincerely,



John R. Lopez IV  
Solicitor General

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procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to § 16-452.”).