



## MONTANA SECRETARY OF STATE

LINDA McCULLOCH

### ELECTION DIRECTIVE #01-2015

Issued: October 15, 2015

#### **TOPIC: Satellite Election Offices**

As the State of Montana's chief election officer, I am responsible for obtaining and maintaining uniformity in the application, operation and interpretation of election laws pursuant to Mont. Code Ann. §§ 13-1-201 and 13-1-202(1)(c).

Over the last three weeks I have been conducting outreach to counties and Tribes for the purpose of gathering information to provide further guidance to election administrators with regard to establishing satellite election offices on reservations. I reached out to county election administrators (as required by law, Mont. Code Ann. § 13-1-102) requesting their input on specifics that should be included in guidance issued by this office. I also reached out to all Tribal presidents and chairmen to seek direct input from them with regard to their views about the need for satellite election offices on reservations.

In addition, I have received letters and emails of support for satellite election offices on American Indian reservations from interest groups.

#### **AUTHORITY:**

This directive is issued under the authority provided to the Secretary under Title 13, Montana Code Annotated, as interpreted by the U. S. District Court, District of Montana, having stated that the Secretary of State "has ... the ability to issue a directive telling the counties that they *must* establish satellite voting offices for in-person absentee voting and late voter registration." (Order, March 26, 2014, Judge Molloy, Document 153, *Wandering Medicine et al. v. McCulloch, et al.*).

#### **DIRECTIVE:**

The Secretary of State directs each county with an American Indian reservation that includes voting-eligible residents to open satellite election offices on those reservations, if certain conditions are present as discussed below. Said offices must provide in-person absentee voting and late registration services equivalent to the services at the main election office of the county.

How these services and offices are provided on the reservation should be determined by county election administrators and county commissioners, working in conjunction with Tribal governments and keeping mindful of the protections offered American Indians under the Voting Rights Act (VRA) and the settlement agreement in the *Wandering Medicine* lawsuit, as well as the cost in both time and resources of any future litigation on this issue. This process must

include outreach to Tribes to assess whether a Tribe desires a satellite office on their reservation and what resources are available.

If it is determined that opening a satellite absentee office will create a required improvement of access to the voting process under the VRA, the information provided in this directive must be used in opening such offices.

## **1. Analysis**

Each county with an American Indian reservation must conduct an analysis under the VRA to determine whether a satellite office would be appropriate or required to protect the voting rights of Tribal members. In conducting these analyses, counties must consult with relevant Tribal governments. These analyses must be completed by January 1 of the year in which an election for federal office is held.

## **2. Cooperation with Tribal governments**

If a satellite office is required on a given American Indian reservation to comply with the VRA, the county is directed to work with Tribal government to open and staff such offices.

The success of administering satellite election offices for federal elections is dependent on cooperation between the county government and Tribal government. Additionally, the following process must be followed:

- a. Prior to January 1, the county must notify the Tribal government in writing that if the Tribe desires a satellite office, the county must receive a written request from the Tribal government by January 31 (or by a deadline agreed upon between the county and the Tribal government) of each year in which an election for federal office will be held, requesting a satellite office. The county must also inform the Tribal government that the Tribal government request letter must include confirmation that the Tribal government will provide a location for the satellite office pursuant to the minimum requirements outlined in Section 3 below.
- b. Counties must work with and consult the Tribal government to arrive at a determination and mutual agreement of the location and days and times of operation for each satellite office.

## **3. Location**

The determination of an appropriate location for a satellite election office is left to the discretion and knowledge of the local election administrator with the advice and consent of Tribal governments.

Satellite election offices must be large enough to accommodate at least two county election staff and at least one voter at a time, and equipment the county deems necessary for issuing absentee ballots. They must be equipped with adequate security features including a door that can be securely locked each evening and accessed only by the election administrator or designee(s); they must have telephone coverage and a secure wired internet connection that is consistent with the MT Votes Security and Access Plan; and they must be able to accommodate people with disabilities per ARM 44.3.104.

#### **4. Staffing**

Ideally, ballots should always be handled by two people. However, there are circumstances when this is not possible, including but not limited to those counties that have a one- or two-person election office. In order to maintain the security of the ballots, officials must use the tamper-resistant seals provided by the Secretary of State, must keep a security seal log, and must reconcile their ballots each day using the prescribed form. Additionally, the person(s) staffing the satellite office and transporting ballots must have on file a sworn oath, consistent with election official oaths and/or election judge oaths.

If the county is able to provide multiple staff, the staff should be from different political parties if possible. See also Election Directive #01-08 Testing and Security Procedures.

#### **5. Security**

Satellite election offices must follow all ballot security procedures. These include: all ballots and materials should be returned to the main election office at the end of each day, and delivered to the satellite election office at the beginning of the next day; **or** they must be locked in a secure room or cabinet at the satellite election office each night. Such room or cabinet must be accessible to only the election administrator or designee(s). Tamper resistant/evident seals and double-locked cabinets or rooms should be used. See Election Directive #01-08, Testing and Security Procedures.

#### **6. Providing Appropriate Ballots**

Satellite election offices must be equipped to provide absentee ballots for all precincts in a county. Election officials staffing a satellite election office must be trained and highly cognizant of the many different ballot styles in order to provide each voter with the appropriate ballot.

The statewide voter registration system will allow issuance of ballots from several different locations. However, the election administrator must develop a process that allows the sequential tracking of each ballot for each absentee voter, and must reconcile absentee ballots daily following the absentee ballot reconciliation process. Reconciliation of ballots is a necessary and critical part of election administration and the security and transparency of the election. Mont. Code Ann. §§ 13-13-232, 13-13-233, 13-13-241.

It is not the intent of the Secretary of State to direct one method over any other method. The method used must be decided at a local level where knowledge of voters' needs and county resources can be determined by the county officials responsible for providing services to its citizens. Some possible methods to track ballots issued from multiple locations follow.

##### **a. Use of Ballot-on-Demand:**

A ballot-on-demand system, as described below, is the preferred method of issuing ballots at a satellite office because use of the system will provide the least disruption of regular election activity at the election office. Importantly, these machines allow ballots to be issued from two locations while conforming to the legal requirement that ballots be issued consecutively.

A ballot-on-demand system is a dedicated application that can be integrated with the voter registration system and that prints out a ballot of the correct ballot style based on each voter's registration information. It allows election officials to print only the number of ballots needed.

Ballot-on-demand systems have recently been acquired by several Montana counties, and are used in other states. The same testing and security measures in place for voting equipment are applicable to a ballot-on-demand system.

Counties may choose to establish use of a ballot-on-demand system at a satellite election office, eliminating the need for a known quantity of pre-numbered ballots for each precinct and split to be available at the satellite office.

The benefits of using a ballot-on-demand system include not having to transport to and store at the satellite office a quantity of unvoted ballots, and, if a ballot-on-demand system is located at both the election office and at the satellite office, being able to issue absentee ballots from both locations. Importantly, ballots are still issued consecutively through the MT Votes system when using a ballot-on-demand system and the paper ballots issued must be reconciled daily.

**b. Alternate option of manually changing stub numbers on ballots issued at a satellite office:**

The satellite election office sequentially numbers the ballot stub based on the next sequential ballot number issued by the statewide voter registration system by crossing out the ballot number pre-printed on the paper stub and writing a number which indicates the satellite election office it was issued from and the sequential number assigned by the statewide voter registration system (e.g., EH #004 – East Helena ballot #4).

The main election office must then be contacted and must VOID the paper ballot at that location with the corresponding number.

This option requires constant communication between the satellite office and the election office, and careful attention to detail.

**c. Additional Options:**

A county may propose to the Secretary of State an alternate method that includes accuracy and security protections.

**7. Time Period**

An election administrator providing services at a satellite election office must ensure that starting at least 30 days prior to the election absentee ballots are available at the satellite election office during the days and hours the satellite election office is open for business as agreed upon by the Tribal government and approved by the county commissioners. Mont. Code Ann. § 13-13-205.

The time period for applying for an absentee ballot ends at noon on the day before election day. Mont. Code Ann. § 13-13-211. Absentee ballots must be returned to the election office **or** a polling place by 8 p.m. on election day. Mont. Code Ann. § 13-13-201.