

KRIS W. KOBACH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4575
www.sos.ks.gov

STATE OF KANSAS

August 2, 2013

Ms. Alice Miller
Acting Executive Director
Election Assistance Commission
1201 New York Ave., NW
Washington, DC 20005

Dear Ms. Miller:

I am in receipt of your letter, dated July 31, 2013, in which you informed our office that the Election Assistance Commission (EAC) is unable, due to a lack of quorum on the Commission, to process the requests previously made by my office for a modification of the instructions relative to Kansas on the national mail voter registration form (Federal Form). Certain portions of your letter lead me to believe that the EAC has misunderstood the position of my office regarding Kansas's responsibility to "accept and use" the Federal Form.

Your letter suggests that Kansas will not "accept and use" the Federal Form. That is incorrect. Indeed, I have specifically instructed county election officers in Kansas to accept the Federal Form without proof of citizenship. However, for the time being a voter who uses the Federal Form and fails to provide proof of citizenship will only be eligible to vote in *federal* elections. As you are no doubt aware, 42 U.S.C. § 1973gg-4(a)(1) requires Kansas to "accept and use the [Federal Form] for the registration of voters *in elections for Federal office*."

Therefore, Kansas will accept and use Federal Form registrations submitted without proof of citizenship documents to register voters for elections for Federal office *until the EAC adds the Kansas-specific instruction that our office has requested to the Federal Form or until Kansas is otherwise relieved of that duty by a court of competent jurisdiction*. When the Kansas-specific instruction is added, applicants using the Federal Form (with documentation proving citizenship) may register for *both* federal and state elections. I have attached a copy of the email that my office recently sent to Kansas election officers in that regard.

In addition, I wish to remove a possible ambiguity in the language of our proposed Kansas-specific instruction as contained in my June 18, 2013, letter to your office. To help clarify our requested instruction, we suggest the following modification to our proposed instruction: "To cast a regular ballot an applicant must provide evidence of U.S. citizenship prior to the ~~first~~ election day ~~after applying to register to vote~~." I hope this modification clarifies the nature of our proposed Kansas-specific instruction.

There is no lawful reason why the staff of the Division of Research, Policy, and Programs of the EAC should not approve the addition of our requested Kansas-specific instruction to the Federal Form. Please confirm as soon as possible that you now understand how Kansas will treat the use of the Federal Form without proof of citizenship until the EAC modifies the Kansas-specific instructions to the Federal Form. I very much appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris W. Kobach". The signature is fluid and cursive, with the first name "Kris" being the most prominent.

Kris W. Kobach
Secretary of State
Office of the Kansas Secretary of State

Attachment

Bryant, Brad [KSOS]

From: Bryant, Brad [KSOS]
Sent: Tuesday, July 30, 2013 9:39 AM
To: CEO list serve (county-election-officials@ink.org)
Subject: Supreme Court decision and Kansas voter registration

To all Kansas county election officers:

This message is intended to provide additional guidance regarding voter registration procedures and the CEO's responsibilities when implementing the dual registration system resulting from the recent U.S. Supreme Court decision in the case of *Arizona v. Inter Tribal Council*. As the Supreme Court made clear, its decision applies only to "federal registration forms" and covers *only federal elections*. States remain free to require proof of citizenship from voters who seek to also vote in state elections.

KSA 25-2309(a) allows any qualified elector to register to vote in Kansas using either the Kansas voter registration form or the national mail voter registration form, which is also referred to as the "federal form." The federal form may be viewed on the federal Election Assistance Commission's web site here:

http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_1209_en9242012.pdf

Do not confuse the term "federal form" with the Federal Post Card Application (FPCA), which is used by military & overseas citizens to apply for ballots under the federal UOCAVA law.

State law allows applicants to use either the state form or the federal form for voter registration because states are required to "accept and use" the federal form. This is part of the National Voter Registration Act of 1993 (NVRA, or "motor voter") and was reaffirmed by the Supreme Court's decision.

Whichever form a person uses, if an applicant does not submit a U.S. citizenship document, you must follow up and request one.

This dual registration system results in the following four scenarios:

Using the Kansas form

(1) A person who applies for voter registration using the Kansas form and submits a citizenship document is eligible to vote in all Kansas elections—federal, state and local.

(2) A person who applies using the Kansas form and does not submit a citizenship document is not eligible to vote in federal, state or local elections. This applicant should be issued a provisional ballot, but the ballot will not count. It would count only if an error was discovered after submission of the provisional ballot.

Using the federal form

(3) A person who applies using the federal form and submits a citizenship document is eligible to vote in all Kansas elections—federal, state and local.

(4) A person who applies using the federal form and does not submit a citizenship document is eligible to vote only in federal elections but is not eligible to vote in state or local elections. This federal-only registrant may have his/her votes counted only for the offices of President/Vice President, U.S. Senator, and U.S. Representative.

Many counties probably have had very few federal forms submitted over the years. Regardless of the number, beginning now you must track which voter registration applicants in your county have applied using the federal form since January 1, 2013. This means you should take note when a federal form comes to your office and keep a list of the names of individuals who submit them. One of the Statuses or Reasons in ELVIS will be changed to assist in tracking those who use the federal form. Also, you should continue to request citizenship documents from those who fail to submit them with their applications, regardless of whether they used the Kansas or the federal form.

We will provide more detailed guidance regarding how this system will be administered when it is finalized.

BRAD BRYANT | State Election Director

Kansas Secretary of State | 785-296-4559 P | 785-291-3051 F | www.sos.ks.gov
Memorial Hall, 1st Floor | 120 S.W. 10th Avenue | Topeka, KS 66612-1594

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