

Response to County Attorney Memo on Precinct Redrawing

To: Board of County Commissioners,
From: K. Joy Anderson
CC: Kelley Camper
Date: 1/13/24
Re: Mr. Dan Slater's Memo to the Board of County Commissioners dated January 9, 2024 regarding Precinct re-drawing

Dear Board of County Commissioners,

In a memo to the Board of County Commissioners dated January 9, 2024, Attorney Dan Slater offered his opinion about precinct re-drawing. I do not agree with Mr. Slater's opinion but offer that there is clarity in the State Statutes regarding precinct re-drawing when you look at the complete Statute of those he cited as well as Statutes he omitted.

"Harmonizing" statutes does not mean eliminating the Venn diagram that occurs within State statutes and putting everything in one circle or in this case giving equal responsibilities where they are not specifically designated by State Statute.

According to the statutes cited by Mr. Slater, the County Clerk and Recorder can take the following actions in regards to precinct boundaries: **divide** the county into precincts C.R.S. § 1-5-101 (1), **establish** precincts based on numbers C.R.S. § 1-5-101 (3) (a), (3) (b), and (5), and **alter** C.R.S. § 1-5-101 (7) precinct boundaries to ensure that no precinct is located in more than one commissioner district. The County Clerk and Recorder also shares, with the County Board of Commissioners, the responsibility to "utilize natural and man-made boundaries that meet the requirements for visible features" C.R.S. § 1-5-101 (5).

Mr. Slater opines that the statutes are not clear about who can change precinct boundaries. He states that when C.R.S. § 30-11-107 (1) (f) makes cross-reference to C.R.S. § 1-5-101 it confuses giving "the authority to change precincts to the Board of Commissioners." He states, "That statute

provides that "'Subject to approval by the board of county commissioners, the county clerk and recorder of each county shall," *set precinct boundaries and divide the counties into precincts*" C.R.S. § 1-5-101 (1). However, the statute cited does not say the County Clerk and Recorder, "set precinct boundaries." Mr. Slater ends the quote early and fashions the last half of his sentence to support his position.

In actuality the statute reads, "Subject to approval by the board of county commissioners, the county clerk and recorder of each county *shall divide the county into as many election precincts for all general, primary, and congressional vacancy elections* as is convenient for the eligible electors of the county and shall designate the place for each precinct at which elections are to be held." The issue for the clerk is number of precincts and the places where elections are to be held. The only places where "set" is used is for the Board of County Commissioners in C.R.S. § 30-11-107 (1) (f), "set off...the boundaries of precincts," and C.R.S. § 30-11-114, "set off new precincts."

I agree with Mr. Slater that there is no way to read the provisions of Title 30 and the Election Code (Title 1) together that allows the Board of Commissioners to unilaterally act without the participation of the County Clerk and Recorder. Her responsibility is limited to divide the county into the correct number of precincts, establish the precincts based on active eligible electors and alter precinct boundaries when necessary so no precinct is located in more than one county commissioner district. The County Clerk and Recorder is an integral part of the precinct drawing process and shares responsibility with the Board of Commissioners to utilize natural and man made boundaries C.R.S. § 1-5-101 (5).

However, nowhere does it say in these statutes that any re-drawing of precincts must start with a proposal by the County Clerk and Recorder. While these statutes do not preclude the County Clerk and Recorder from initiating the process to divide, establish, or alter precinct boundaries specific language

gives the Board of Commissioners unilateral authority in C.R.S. § 30-11-107 (1) (f) "to **set off, organize,** and change the boundaries of precincts in their respective counties..."

The Board of County Commissioners role is to be involved in the **establishing** boundaries process of precinct re-drawing C.R.S. § 1-5-101 (1) and if the number of references to a certain action indicate its importance in the State Statutes then the most important role of the Board of County Commissioners in the precinct re-drawing process is their **approval** of the changed boundaries C.R.S. § 1-5-101 (1), two occurrences in (3) (a)), and another in (5). There is no instance in these statutes where the County Clerk and Recorder is given the authority to approve the boundaries rather in each instance where the word "approval" occurs "subject to" precedes its use. This means two things. First, the Board of County Commissioners' approval is a required condition for the Clerk and Recorder's action to establish the precinct re-drawing. Second, the County Clerk and Recorder is subservient to the Board of County Commissioners in this process and in their approval.

It does not appear that the Clerk and Recorder has the option to deny the precinct re-drawing if it is approved by the Board of County Commissioners, if it follows the division and numbers of precincts as determined by the County Clerk and Recorder, if it takes into consideration natural and man-made boundaries that meet the requirements for visible features adopted by the United States bureau of the census and as long as no precinct is located in more than one County Commissioner district.

Furthermore, most of Mr. Slater's argument centers on C.R.S. § 1-5-101 which is the State statute section about polling. Interestingly, Mr. Slater does not refer to C.R.S. § 1-5-103 (2) and 104 (2) which specifically address change in boundaries for partisan and non-partisan elections. C.R.S. § 1-5-103 (2) states, "All changes in precinct boundaries or numbering for nonpartisan elections shall be *reported to*

the *county clerk and recorder* within ten days by the *designated election official*, and a corrected precinct map shall be transmitted to the county clerk and recorder as soon as possible after the changes have been effected."

In Custer County the County Clerk and Recorder is also the election official. **However, they are two different positions in the State Statutes** with the Clerk and Recorder **only receiving** the change information from the election official in order to **establish** the precinct. The County Board of Commissioners would have already approved it so that the Clerk can record it. When these statutes say "establish" it is always in regards to a *specific action*. When the word "establishing" is used it is in conjunction with the *process* of precinct re-drawing.

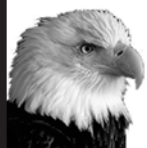
This is very similar to how the Statutes describe the founding of townships and municipalities. Commissioners form the boundaries and the Clerk records it.

A harmonization of these statutes shows that the Board of County Commissioners not only have within their authority to participate in the process of precinct re-drawing but specifically and exclusively have the power to "set off" the precinct re-drawing and that specifically and exclusively approval of the Board of County Commissioners is a condition for dividing and establishing precinct boundary changes. Harmonization also shows how the Clerk continues to be in a role that records information. The Clerk gives the parameters (division, numbers), checks for consideration of natural and unnatural boundaries, but is subservient to the Board of County Commissioners who alone give approval for deciding the boundaries. The only time the Clerk can alter or "change" a boundary is if one precinct crosses between two commissioner districts C.R.S. § 1-5-101 (7).

Respectfully,

K. Joy Anderson

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He who wishes to be obeyed must know how to command.

— Niccolo Machiavelli