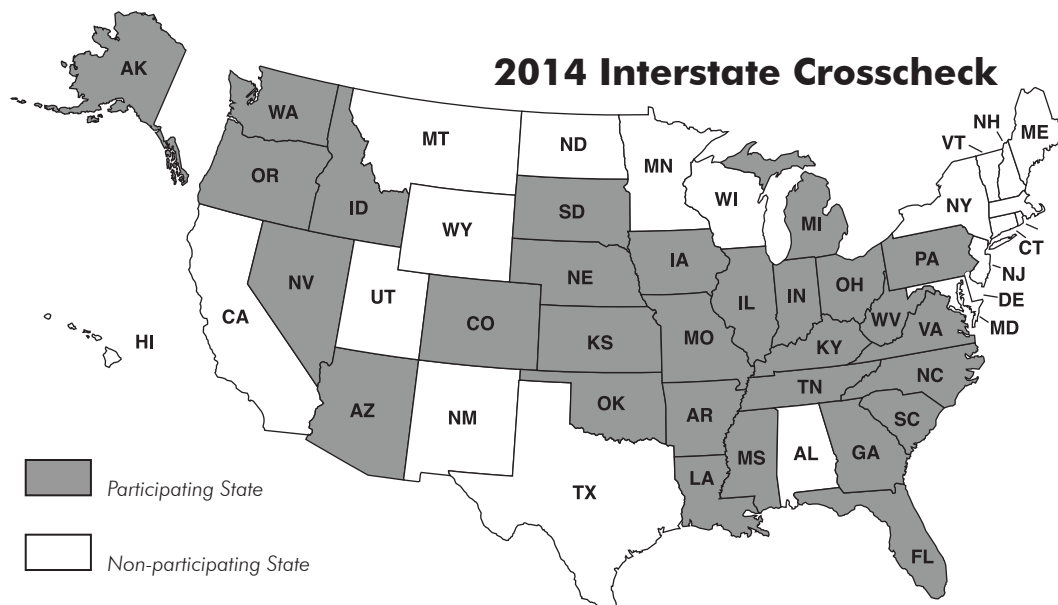


Interstate Crosscheck Program Grows

The ninth annual data comparison for the interstate voter registration crosscheck program will be run in January 2014. The program has grown from its original four midwest states (Iowa, Kansas, Missouri and Nebraska) to 29 states in 2014. In 2012 there were 15 participating states and in 2013 there were 22.



The interstate crosscheck program, administered by the Kansas Secretary of State's office, began in December 2005 when the secretaries representing the four original states signed a Memorandum of Understanding to coordinate their offices' efforts in several areas of election administration. Crosschecking voter registration data was one of the areas cited. The first crosscheck was conducted the next year, in 2006.

The program serves two purposes: (1) it identifies possible duplicate registrations among states, and (2) it provides evidence of possible double votes. Most states, including Kansas, process the duplicate registrations by mailing the individuals confirmation notices (as provided in the National Voter Registration Act of 1993) and placing the individuals' names in inactive status. Inactive voters are those for whom election officers have received evidence that they have moved out of the county or state. Once they are given inactive status, their registrations may be canceled if they fail to vote or otherwise contact the election office from the date of the confirmation notice through the second succeeding federal general (November) election.

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From the desk of the Secretary

"Lead, follow, or get out of the way."

*Thomas Paine, 1737 - 1809. Kansas has consistently
chosen the former when it comes to elections.*

In 2005 Kansas took the lead when four states agreed to compare voter registration records with each other annually in order to identify duplicate voter registrations and double votes. Our IT department pulls data from a secure FTP site, runs comparisons and uploads the results to the FTP site on January 15 each year. Then each participating state can download its results and process them according to their own laws and regulations. The Interstate Voter Registration Crosscheck Program had increased to 14 participating states when I took office in 2011.

Convinced of the value of the program, I decided that I would make it one of my highest priorities to increase the number of participating states, hopefully doubling its size. The more states that participate, the more duplicate records each participating state can find. I contacted chief election officers in other states to explain how Crosscheck works and the value of this tool to maintain clean, current, and accurate voter lists to fight voter fraud. As a result, the number of states participating has more than doubled to 29 states that will share voter registration data in January 2014. While I am very pleased that over half of the 50 states are currently on board, I will continue to promote Crosscheck as an effective means of list maintenance.

In 2008 Kansas took the lead in helping voters to find election information when they need it by using internet search engines. As part of the Voting Information Project (VIP), Kansas contracted with ES&S to make programming changes to our ELVIS database so that all states with ES&S can provide a data feed to the VIP program which hosts the data. Google acknowledged our contribution by presenting a Kansas-shaped VIP award to the State of Kansas at the summer NASS conference.

Finally, in 2011 Kansas took the lead as the first state to combine three election-security policies: (1) requiring a government-issued photo ID for voting in person, (2) requiring either a Kansas driver's license number or photocopy of a current photo ID for applying for a mail-in ballot, and (3) requiring a document proving U.S. citizenship when a person registers to vote for the first time. Consequently, Kansas elections are the most secure in the nation against fraud.

Thank you for all you have done to help implement these reforms. Together we have made Kansas the nation's leader.

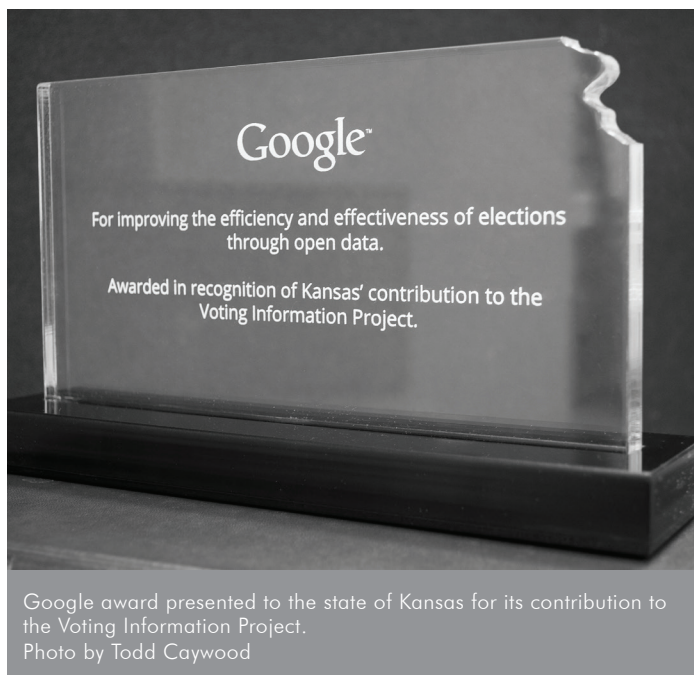
A handwritten signature in black ink that reads "Kris W. Kobach". The signature is written in a cursive, flowing style.

Voting Information Project Award Received at NASS

On July 19th, 2013, Google presented an award to recognize Kansas' efforts to improve the efficiency and effectiveness of elections through open data. Eight other states also received the award at the National Association of Secretaries of State 2013 Summer Conference in Anchorage, Alaska. Each of the nine states had participated in the Voting Information Project (VIP) by publishing polling places and other election data as part of the open data effort. Secretary of State Kris Kobach was present to accept the award for his office.

By joining the project on the ground floor, Kansas was among the first states to help registered voters to more readily find election information when they need it and where they are most likely to look for it. Government websites often are not the first place voters look. VIP is similar to the online VoterView feature of the Kansas voter registration system, and voters who perform Google searches for voter registration information will end up at the VoterView website as a result of the VIP.

In the run up to the 2012 general election, 22 million times users queried the Google Civic Information API. According to the VIP program, "When the project started in 2008, nobody involved knew whether the open data effort would have any impact at all. Early adopters took a risk on something new by agreeing to participate and the payoff was immense."



The VIP program was initiated as a cooperative effort between the Pew Foundation and Google. As a private charitable organization, Pew's rules do not allow them to pay money to a private for-profit corporation, so Pew asked the Kansas SOS office to serve as a go-between. The SOS office wrote specifications and requested Election Systems & Software to make the required programming changes in the voter registration database. The cost of the programming was paid by Pew to the SOS office and passed on to ES&S. As a result, all states with ES&S databases benefit from the new functionality.

For more information about Kansas participation in the VIP project since 2008, see *Canvassing Kansas*, September 2010, page 6. ■

Clemens Receives CERA Certification

Crystal Clemens, Seward County Deputy Clerk/Election Officer, completed the Election Center's CERA program this year. Certificates were presented at the Election Center's annual national conference in Savannah, GA, held August 13-17, 2013. Crystal was one of fifty eight election officials to receive the award this year.

CERA (Certified Elections/Registration Administrator) is one of very few nationally recognized programs providing professional training for election administrators. The Election Center itself is a nationwide professional association of local, county and state voter registrars and election administrators that promotes training and best practices, monitors and lobbies on federal legislation, and provides a forum for the exchange of ideas.

Completion of the CERA program requires travel and attendance at a number of training sessions across the country over a period of years. Crystal is one of a small handful of Kansas election officials who have completed it.

Crystal's supervisor, Seward County Clerk Stacia Long, had this to say: "Crystal has always shown great passion for the entire election process. I am very proud of her designation as a CERA. She truly is a great asset to the Election Office and Seward County." ■

Attorney General Issues Opinion on Concealed Carry

The office of Attorney General Derek Schmidt issued a formal opinion on November 27, 2013 in response to questions posed by Secretary of State Kris Kobach. Kobach requested the opinion in a letter dated September 30, 2013, as chief state election officer and on behalf of county election officers across the state.

The issue at the heart of the request was how polling places would be affected by passage of the Personal and Family Protection Act of 2013. The Act, passed as Senate Substitute for House Bill 2052 (2013 Kansas Session Laws, Chapter 105), authorizes persons who possess concealed carry permits to carry weapons into municipal buildings except under specific circumstances. “Municipal building” includes any facility owned or leased by a municipality, which could include facilities used as polling places during advance voting or on election day.

In his letter, Secretary Kobach asked the following questions:

- 1. Does the Act apply to privately-owned facilities used as polling places by verbal agreement?**
- 2. Does the Act apply to privately-owned facilities used as polling places by written agreement when no rent money is paid to the owner or manager of the site?**
- 3. Does the Act apply to privately-owned facilities used as polling places by written agreement when rent money is paid to the owner or manager of the site?**
- 4. If only one room or one portion of a building otherwise not subject to the Act is used as a polling place, does the Act apply to the entire building or only to the area used as a polling place?**
- 5. If an area in a nursing home, assisted living center or long term care facility is used for mobile advance voting pursuant to K.S.A. 25-2812, does the Act apply to the voting area?**
- 6. Do the provisions of the Act applicable to schools still apply to school facilities used as polling places?**
- 7. Is a county government liable for claims of denial of equal protection if various polling places have different levels of security as a result of implementation of the Act?**

At the time of this writing, the secretary of state had just begun to analyze the opinion. The SOS office will communicate further information to CEOs when the analysis is complete. In the meantime, CEOs are encouraged to discuss the opinion with their county attorneys and counselors. The full opinion may be found online: <http://ksag.washburnlaw.edu/opinions/2013/2013-020.pdf>.

The synopsis from Attorney General Opinion 2013-20 is reproduced here:

Except as described herein, the use of real property as a polling place does not transform the nature of that property for the purposes of the PFPA. Any concealed carry requirements that applied to that property immediately before its temporary use as a polling place continue to apply during its use as a polling place and thereafter.

The Personal and Family Protection Act (PFPA) authorizes concealed carry licensees to carry a concealed handgun into a polling place to the extent that concealed handguns are permitted to be carried into the building in which the polling place is located.

The provisions of K.S.A. 2013 Supp. 75-7c20 apply only to buildings that are owned or leased in their entirety by the state or a municipality. If the PFPA requires concealed carry to be permitted in a state or municipal building, then concealed carry licensees must be permitted to carry a concealed handgun in all parts of the building, including areas used as polling places, with the exception of courtrooms, ancillary courtrooms, and secure areas of correctional facilities, jails and law enforcement agencies.

The governing body or chief administrative officer, if no governing body exists, of a state or municipal building may exempt the building from the provisions of K.S.A. 2013 Supp. 75-7c20 for a set period of time. If a state or municipal building is so exempted, concealed carry may be prohibited by posting the building in accordance with K.S.A. 2013 Supp. 75-7c10.

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SOS Office Involved in Litigation

The office of the Kansas Secretary of State finds itself involved in three lawsuits that could affect the voter registration process and the 2014 elections. All are related to the 2011 Kansas SAFE Act. One case deals with the photo ID requirement and the other two deal with the requirement that new voters prove their U.S. citizenship the first time they register to vote.

1. Arthur Sprye and Charles Hamner v. Kris W. Kobach

In a suit filed November 1, 2013, two Osage County voters challenged the constitutionality of the photo ID requirement.

2. Kris W. Kobach, Kansas Secretary of State; and Ken Bennett, Arizona Secretary of State; v. United States Election Assistance Commission

In a suit filed in U.S. District Court in Kansas on August 21, 2013, the Kansas and Arizona Secretaries of State asked for a ruling to require the Election Assistance Commission to include the citizenship requirement in the voter instructions accompanying the universal federal voter registration application form, which is prescribed by the EAC. This lawsuit is in response to the June 17, 2013 ruling by the U.S. Supreme Court in *Arizona v. Inter Tribal Council of Arizona* regarding the constitutionality of states' requirements that voters provide proof

of citizenship. The Court's ruling indicated that states might file suit if the EAC declined to make the necessary changes to the voter registration form administratively.

3. Aaron Belenky, Scott Jones, and Equality Kansas v. Kris Kobach, Kansas Secretary of State, and Brad Bryant, Kansas Elections Director

In a suit filed November 21, 2013, the plaintiffs seek declaratory and injunctive relief to keep the secretary of state's office from implementing a dual voter registration system. The SOS office had developed contingency plans to administer voter registration and ballots to individuals who attempted to register using the universal federal form but who had not provided proof of U.S. citizenship in compliance with Kansas law. No actions have been taken to implement the plan, and no federal elections have occurred in which federal-only ballots were administered to these voters. (See also *Canvassing Kansas*, September 2013, page 1.)

The goal of the secretary of state's office is to have the cases decided as soon as possible so CEOs and poll workers will know the rules before preparations begin for the 2014 election season. ■

Kobach Reappoints Lehman

Secretary of State Kris Kobach reappointed Tabitha Lehman as Sedgwick County Election Commissioner in September 2013. Her regular term expires on July 19, 2017. This will be Lehman's first full term as election commissioner, having been appointed to fill an unexpired term in 2011.

Lehman was appointed in November 2011 to succeed Bill Gale who resigned his position to pursue other employment. Gale had been appointed in November 2003 to succeed Marilyn Chapman, and he was reappointed in July 2009.

Speaking of her reappointment, Lehman said:

"I appreciate the opportunity to continue serving the voters of Sedgwick County and look forward to providing them with safe and efficient elections in the coming four years." ■



Sedgwick County Election Commissioner Tabitha Lehman
Photo courtesy of Tabitha Lehman

Crosscheck

Cont'd

Evidence of double votes is presented to law enforcement officers for investigation and possible prosecution. The referral is usually made to county law enforcement officers, but state or federal officials may be involved in some cases.

States join the crosscheck by signing a Memorandum of Understanding. The chief state election officer (usually the secretary of state) or a designee may sign the MOU for a given state.

Participating states pull their entire voter registration databases and upload them to a secure FTP site on January 15 each year. The Kansas SOS office IT staff pull the states' data from the FTP site, run the comparison, and upload each state's results to the FTP site. Each state then pulls its results from the FTP site and processes them according to its individual laws, regulations and procedures. In Kansas, results are provided to CEOs with instructions for analyzing them and mailing confirmation notices.

The crosscheck program is one of several list maintenance programs used to keep registration records up to date. (See also Canvassing Kansas, March 2010, page 9.) ■

Attorney General

Cont'd

If the governing body or chief administrative officer of a state or municipal building does not exempt a building from the provisions of K.S.A. 2013 Supp. 75-7c20, then concealed carry licensees must be permitted to carry a concealed handgun inside the building unless adequate security measures are provided and the building is posted as prohibiting concealed carry.

Concealed carry is not required to be permitted in a polling place located inside a privately-owned building unless the county has leased the entire privately-owned building.

Concealed carry is not required to be permitted in polling places located inside public school district buildings because a public school district is not a municipality for the purposes of the PFPA.

An equal protection claim against a county based upon the varying ability of concealed carry licensees to carry a concealed handgun into a polling place would be subject to the rational basis test. ■

Jury List Program Initiated

A 2013 law which went into effect July 1, 2013, requires district courts in Kansas to provide to the secretary of state the names of prospective jurors who indicate on their jury questionnaires that they are not United States citizens. Noncitizens are exempt from jury duty. The secretary of state passes the names on to CEOs for review. If they are found to be registered voters, their registrations are canceled. (See 2013 House Bill 2164; 2013 Kansas Session Laws Chapter 85.)

The relevant section of the law is New Section 1, reproduced below. Most of the bill deals with grand juries.

New Section 1. (a) On and after July 1, 2013, any jury commissioner that receives information regarding citizenship from a prospective juror or court of this state that disqualifies or potentially disqualifies such prospective juror from jury service pursuant to K.S.A. 43-156, and amendments thereto, shall submit such information to the secretary of state in a form and manner approved by the secretary of state. Any such information provided by a jury commissioner to the secretary of state shall be limited to the information regarding citizenship and the full name, current and prior addresses, age and telephone number of the prospective juror; and, if available, the date of birth of the prospective juror. Any such information provided by a jury commissioner to the secretary of state shall be used for the purpose of maintaining voter registrations as required by law.

The secretary of state's office worked with the Office of Judicial Administration (OJA) to design the following procedure to comply with the law:

- The clerk in each of Kansas' 31 judicial districts will submit a monthly report directly to the SOS office containing names of persons who were exempted from jury duty on the basis of their claims to be non-U.S. citizens.
- Reports will be submitted via email on or after the 15th of each month beginning in December 2013.
- The SOS will notify OJA of missing reports. OJA will contact any such district court clerks to remind them to submit their reports.
- If any of the persons listed in the reports are found to be registered voters and their citizenship status is not in doubt, their names will be sent by the SOS office to the appropriate county election officers with instructions regarding the possible cancellation of the persons' voter registration records. ■

State Fair Opinion Poll Results

The Office of the Secretary of State has operated a booth in the Meadowlark Building at the Kansas State Fair in Hutchinson for more than 25 years. The dates of the fair this year were September 6-15. This was the 100th anniversary of the fair, and the theme was "Never Gets Old."

At the booth, the SOS office provides information about agency activities, registers voters, and conducts an opinion poll on current issues. Don Merriman, Saline County Clerk, has assisted the SOS office for many years by lending ES&S iVotronic voting machines to help the fair visitors familiarize themselves with electronic voting technology. We want to recognize and thank Don for his assistance and the Lockwood Company for its donation of ballot programming services.

The SOS booth is mostly staffed by agency employees, but sometimes county election office personnel help out by volunteering to work in the booth. This year's county volunteers were: Sharon Seibel, Ford County Clerk; Debbie Cox, Ford County Deputy Clerk; Donna Maskus, Ellis County Clerk; Don Merriman, Saline County Clerk; Crysta Torson, Lane County Clerk; and Karen Duncan, Lane County Deputy Clerk. Thanks to the volunteers for helping out!

Following are the results of the opinion poll:

Question #1: New Kansas voters must provide proof of citizenship when registering to vote.

- 709** I approve of this requirement.
- 96** I do not approve of this requirement.
- 27** I have no opinion about this requirement.

Question #2: Which university will advance the furthest in the 2014 NCAA Men's Basketball Tournament?

- 397** University of Kansas
- 196** Kansas State University
- 179** Wichita State University
- 48** None will make the tournament

Question #3: Which of these alleged abuses of power by the federal government is the most concerning to you?

- 342** NSA secretly collecting phone records of millions of U.S. citizens.
- 332** IRS intentionally discriminating against conservative organizations.

153 Presidential political appointees using secret email accounts to conduct official government business.

132 White House's sweeping seizure of Associated Press records and cable television documents.

Question #4: Should the Internal Revenue Service be abolished?

- 526** Yes. A flat or fair tax is simpler, cheaper and easier to manage.
- 86** Yes. We shouldn't have to pay income tax anyway.
- 125** No. Better training and oversight will fix most problems.
- 2** No. There is nothing wrong with the IRS.

Question #5: Who is your favorite super hero?

- 90** Xena: Warrior Princess
- 379** Superman
- 94** Wonder Woman
- 195** Batman ■

Former Longtime Neosho County Clerk Dies

Wayne B. Gibson, Jr., a well known longtime county clerk from Neosho County, died on September 18, 2013, at a hospital in Labette County. Wayne served many years in the Neosho County Clerk's office and was known to Kansas election officials as a hardworking, conscientious public servant.

Gibson started working in the county clerk's office on January 16, 1961 and became Deputy Clerk about a month later. He then became Clerk on July 14, 1971, following the death of his predecessor, Virgil Lowe. Gibson served continuously until his retirement on April 20, 2007. During that time he was elected ten times - in 1972, 1974, 1976, 1980, 1984, 1988, 1992, 1996, 2000 and 2004.

The vacancy created by Gibson's resignation was filled by Randal Neely, who took office on August 1, 2007, and continues in office today. ■

Dominion Seeks Voting System Certification

Dominion Voting Systems, Inc., submitted a letter dated October 4, 2013 requesting certification of its Democracy Suite Version 4.14 voting system. According to Kansas law, a manufacturer seeking certification of its voting system must submit a formal letter, pay a \$500 fee, and demonstrate the system at a certification hearing held in Topeka.

A hearing was held at the secretary of state's office on November 21, 2013, attended by Secretary of State Kris Kobach and members of his staff. The Democracy Suite system was demonstrated and explained by Norma Townsend, Don Vopalensky, Jeff Hintz and Michael Kelava. Dominion is represented in Kansas by its subcontractor, Election Source. Dominion also markets and services Premier (formerly Diebold) voting equipment, having purchased Premier from Election Systems and Software several years ago. ES&S still sells and services Premier equipment along with its own system, but Dominion owns the intellectual property rights of Premier equipment as a result of its purchase of the company.

As of this writing, Secretary Kobach has not certified the Dominion Democracy Suite. CEOs will be notified if and when certification is granted.

The Democracy Suite is a paper optical scan-based system which includes precinct ballot scanners and central scanners. The accessible ADA- and HAVA-compliant device allows a voter with a visual impairment to record his/her choices using an audio ballot and keypad. The system prints an optical scan ballot that is scanned along with other ballots. ■

Sedgwick County Sued Over Ballot Records

Sedgwick County Election Commissioner Tabitha Lehman was sued by a person seeking public access to Real Time Audit Logs (RTALs) on electronic voting machines. RTAL is ES&S's trade name for a voter verifiable paper audit trail (VVPAT), which is a printable electronic record of each voter's actions on the voting machine. RTAL documents are viewable by the voter before the electronic ballot is cast. Once the voter has cast the ballot the documents are randomly stored in the system's memory.

Elizabeth Clarkson v. Sedgwick County Elections Commissioner Tabitha Lehman was filed in state district court in Sedgwick County on June 18, 2013. The plaintiff sought access to RTAL records pursuant to the Kansas Open Records Act in order to conduct a post-election audit of the results of the November 2010 election.

In response to the plaintiff's original request for records, the election office provided precinct-based results tapes but denied the request for individual ballot logs, citing K.S.A. 25-2422 and the unnecessary burden and expense required to produce the records. State law does provide limited access to election records in a recount, but the law does not have specific provisions related to VVPATs or RTALs. These arguments were detailed in a response filed in court in July.

The court ruled in favor of the election commissioner's office. ■



SOS Holiday Hours

In observance of the regular calendar of state holidays, the secretary of state's office will be closed on the following dates:

December 25, 2013, for Christmas Day, and **January 1, 2014**, for New Year's Day.

In addition, the office will be closed Monday, **January 20, 2014** in observance of Martin Luther King, Jr. Day.

Happy Holidays from the SOS office!

