



STATE OF UTAH | OFFICE OF THE LIEUTENANT GOVERNOR

Conflict of Interest Avoidance Plan Pursuant to Utah Code 20A-1-109

Under Utah statute *20A-1-105*, the lieutenant governor is the chief election officer and required to perform enumerated duties in relation to election administration. Utah statute also prescribes certain duties which are delegated to a county clerk (or appropriate local official). *20A-1-102(27)*.

As directed by *20A-1-109*, this memo sets out procedures to follow in the event of a conflicted race. Many of these procedures are already established in code, policy or rule.

Definition

A “conflicted race” is defined in Administrative Rule *R623-12* as one in which the governor is seeking reelection or election to a different office. It also includes a race where the lieutenant governor is a candidate on the ballot.

This memo identifies the specific types of decisions or actions outlined in and required by *20A-1-109*, including the steps to be taken in event of an actual or perceived conflict.

Examples of Potential Conflicts

Declaration of candidacy

Under Utah statute, a filing officer may not accept the filing form if the candidate does not meet the qualifications for the office they seek. *20A-9-201(4)*. A question regarding acceptance or rejection of a declaration of candidacy for a conflicted race might be referred to an independent advisor.

Signature verification and certification of nomination petition signatures

Under certain circumstances, candidates may access the ballot via the nomination process. For candidates for whom the lieutenant governor is the filing officer, nomination packets are the statutory responsibility of the lieutenant governor. Historically, signature verification has been contracted out to a county clerk. The Office of the Lieutenant Governor will continue to honor this agreement for the county clerk to provide signature verification services, and will not participate in the signature verification or certification process other than to track the status of these petitions on the website as required by *20A-9-408.2*. This process is outlined further in Administrative Rule *R623-4-3*.

The lieutenant governor is prohibited from auditing these conflicted races under Administrative Rule R623-12-6.

Financial Disclosure

During the election cycle “[t]he lieutenant governor shall disqualify a state office candidate”, and/or sanction with a fine for a candidate’s failure to file financial reports at specified periods. *20A-11-206(3)(a)*. While the code prescribes the penalties for this, there are potential circumstances that may arise, leading to disagreements about whether the candidate has failed to file the report during different reporting periods. If such a disagreement were to arise with a conflicted race candidate or campaign, an independent advisor could be called upon to recommend solutions to resolve the situation.

Ballot certification

Under Utah statute, the lieutenant governor must certify, to each county clerk, a list of candidates to appear on the regular primary election ballot. This is a purely administrative task and includes the names of all candidates whose declaration of candidacy or certificate of nomination was accepted. *20A-5a-205*.

A similar process is required for each general election under *20A-5a-209*. There is no allowance for discretion in what names to include on the list. Any conflict or controversy is resolved during the declaration of candidacy period.

Recounts

Election recounts are not discretionary under Utah law and strictly performed by the county clerk (or applicable municipal / special district clerk) when required by law. *20A-Part 4*. The only role that the lieutenant governor plays in a recount is to formally accept the request for a recount in a statewide or multi-county race. The lieutenant governor has no authority to require or conduct a recount. After a recount is conducted by the applicable election officer, the board of canvassers for the county (or municipality) must immediately convene and canvass the recount and create their report which then becomes the official result of the race. This report is then forwarded to the Office of the Lieutenant Governor. There is no further certification by the lieutenant governor or the state board of canvassers. *20A-4-401(11)*.

Certifying election results

The lieutenant governor is statutorily required to certify the results for certain statewide races in which she serves as the filing officer.

For a presidential primary or regular primary election, the lieutenant governor is required to certify and publish the results of the election.

For a general election, the lieutenant governor serves as the secretary to the state board of canvassers under *20A-4-306*. In this role, the lieutenant governor does not vote to certify

election results. That is left entirely to the Board members, specifically, the state treasurer, attorney general, and state auditor under *20A-4-306*.

For each statewide canvass, the decision to certify is merely a review and acceptance of results that have been canvassed and reported by the board of canvassers from each of the 29 counties. There is no opportunity at a state canvass to alter or challenge reported and canvassed results. Statute specifies that “the state board of canvassers may not withhold the declaration of the result or any certificate of election because of any defect or informality in the returns of any election if the board can determine from the returns, with any certainty, what office is intended and who is elected to it.” *20A-4-306(4)*.

Process for resolving a potential or perceived conflict of interest

Within 10 days of filing for office by the incumbent governor, or within 10 days of the lieutenant governor declaring candidacy for any state or federal office, the lieutenant governor will select an independent third party who meets the following qualifications:

- Legal or election administrative experience
- Must not have made financial contributions to candidates of the conflicted race
- Well respected in the community
- An active Utah voter

Within that 10-day selection period, a letter designating the independent advisor, and their willingness to serve will be formalized and made public.

Under typical circumstances, when a controversy or complaint arises regarding an election the Lieutenant Governor consults directly with her staff and the Assistant Attorney General assigned to the office, if necessary, and makes a decision about the matter. If the matter involves a conflicted race and it is determined by the director of elections that there is a real or perceived conflict of interest, the director will consult with the selected independent advisor and request a resolution to be recommended.

This recommendation shall be made formally in writing and submitted to the lieutenant governor for consideration. It shall also be made public. The independent advisor shall make this determination within 10 business days - or sooner if circumstances warrant a speedier decision.

The independent advisor shall not be compensated, although they may be reimbursed for travel or other related expenses if necessary.