

STATE OF COLORADO

Department of State

1700 Broadway
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Denver, CO 80290



Scott Gessler
Secretary of State

Judd Choate
Director, Elections Division

September 29, 2011

Gilbert Ortiz, Clerk and Recorder
Pueblo County
215 West 10th Street
Pueblo, CO 81001

Re: Sending Mail Ballots to Inactive – Failed to Vote UOCAVA Electors

Dear Clerk Ortiz:

This is a response to your September 27 letter regarding mailing ballots to inactive – failed to vote UOCAVA electors. You requested express guidance from my office regarding your authority to mail ballots to inactive – failed to vote UOCAVA electors. As my office has previously explained, you do not have the authority to mail ballots to such voters. With the assistance and advice of the Attorney General’s office, I have concluded that a county may not mail a ballot in a mail ballot election to an inactive – failed to vote UOCAVA elector unless that person submits a valid ballot application. Hence, as you requested, please consider this letter as an order from the Secretary of State not to send mail ballots to inactive – failed to vote UOCAVA electors.

Before setting forth our legal analysis, please note that I was disappointed by your letter not only because my office had previously answered this question, but also because it indicates that Pueblo County could have taken more proactive steps to assist military and overseas voters in advance of the 45-day mailing deadline. My office had already informed Pueblo County by phone and in writing that you did not have the authority to mail ballots to these voters. Your additional concerns should have been addressed well before the September 17 mailing deadline for active UOCAVA electors. I am concerned that you raise these concerns well after the UOCAVA deadline, that you sent your request to me only after first distributing it to others, and that you attached a 48-hour ultimatum. I hope that in the future you will directly and promptly contact my office with your analysis and concerns.

After reviewing the matter with the attorney general’s office, my office’s position remains the same. The General Assembly enacted the “Uniform Military and Overseas Voters Act” in 2011. § 1-8.3-101 through -118, C.R.S. (2011). The Act establishes procedures by which “covered voters” may cast a ballot when they are absent from the State. A “covered voter” is a person in (1) the active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard; (2) the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States, or (3) the National Guard. Section 1-8.3-102 (2)(a) and (8), C.R.S. (2011). The procedures in the Act apply to (1) federal elections, (2) general, recall, or primary elections for statewide or state

legislative office or state ballot elections, and (3) any other election coordinated by the county clerk and recorder. Section 1-8.3-103(3), C.R.S. (2011). A covered voter may participate in mail ballot elections as well as elections permitting mail-in ballots. Section 1-8.3-108(6), C.R.S. (2011).

A covered voter who is registered to vote may apply for a ballot. Ballots are not automatically sent to covered voters. Rather, the covered voter “shall inform the appropriate election official that the voter is a covered voter” by submitting an approved ballot application form. Section 1-8.3-108(5), C.R.S. (2011). The election official distributes a ballot and ballot materials to a covered voters “who submit a valid ballot application” by the applicable deadline. Section 1-8.3-110(1), C.R.S. (2011). Thus, Pueblo County may only send mail ballots to inactive voters who submit a timely request as required by the “Uniform Military and Overseas Voters Act”.

Pueblo can take immediate steps to assist UOCAVA voters similar to those already in use in El Paso and other Colorado counties. Indeed, El Paso has the state’s largest UOCAVA population, and it has proactively sought to ensure UOCAVA voters have every opportunity become active voters and thus receive a mail ballot. Pueblo County has 80 inactive – failed to vote UOCAVA electors and the statewide voter database (SCORE) has email addresses for 64 of the 80. Pueblo should immediately email these 64 electors to advise them of the steps for updating their record and requesting a ballot. You are welcome to include a link to www.GoVoteColorado.com, which allows voters to immediately change their status to “active.” In addition, your office should immediately send a postcard containing this information to the remaining 16 electors without a known email address. These communications should also include a reminder that UOCAVA electors may receive *and* return their ballots to your office by fax or email.

As always, please feel free to contact me or my staff by phone, email, or letter with any additional questions.

Sincerely,

Scott Gessler
Colorado Secretary of State