

SECRETARY OF STATE

Petition by Linn County Auditor,	}	PETITION FOR RULE MAKING
Joel D. Miller, for	}	
Allowance of Counting Absentee Ballots	}	

To: Iowa Secretary of State Paul Pate, c/o Molly Widen and Heidi Burhans
Lucas State Office Building
Des Moines, Iowa 50319

Re: Petition for Rule Making in Regards to Iowa Code 53.23

Dear Secretary of State Paul Pate,

In compliance with Iowa Administrative Code 721-8.1(17A) **Petition for rule making**, the Linn County Auditor, Joel Miller, hereby requests the following rule-making action in regard to the counting of absentee ballots.

STATEMENT OF SPECIFIC RULE-MAKING ACTION SOUGHT BY THE PETITIONER:

The following administrative rule shall be adopted:

When the State Commissioner of Elections determines that due to extenuating circumstances, the counting of absentee ballots cannot reasonably be completed by 10:00 p.m. on election day, as required in Iowa Code 53.23, such commissioner shall have the authority to grant reasonable allowance in providing the special precinct election boards with adequate days for counting absentee ballots.

CITATION TO ANY LAW DEEMED RELEVANT TO THE AGENCY'S AUTHORITY TO TAKE THE ACTION URGED OR TO THE DESIRABILITY OF THAT ACTION:

Iowa Code Chapter 53:

In accordance with chapter 17A, Iowa Code 53.1 provides the State Commissioner with the authority to adopt rules in furtherance of Chapter 53 "Absent Voters."

Therefore, the state commissioner has the authority to set rules regarding 53.23 **Special Election Precinct Board**.

Iowa Code **53.23 Special precinct election board** states

- 1 The election board of the absentee ballot and special voters precinct shall be appointed by the commissioner in the manner prescribed by sections 49.12 and 49.13, except that the

number of precinct election officials appointed to the board shall be sufficient to complete the counting of absentee ballots by 10:00 p.m. on election day.

3.a The commissioner shall set the convening time for the board, allowing a reasonable amount of time to complete counting all absentee ballots by 10:00 p.m. on election day...

c. For the general election, the commissioner may convene the special precinct election board on the day before the election to begin counting absentee ballots. However, if in the preceding general election the counting of absentee ballots was not completed by 10:00 p.m. on election day, the commissioner shall convene the special precinct election board on the day before the next general election to begin counting absentee ballots. The board shall not release the results of its tabulation pursuant to this paragraph until the count is completed on election day.

Iowa Administrative Code 721

Iowa Administrative Code 721 applies to the Secretary of State.

The requested rule would likely be placed after Iowa Administrative Code 721-21.359(53). Iowa Administrative Code 721-21.359(53) **Processing absentee ballots before election day** details the rules for processing absentee ballots before election day:

The commissioner may only direct the absentee and special voters precinct board to open envelopes marked with affidavits on the Monday before election day under the following circumstances:

For any election, only if the commissioner has provided secrecy envelopes (or folders) pursuant to subrule 21.359(1) and the commissioner determines removing secrecy envelopes from envelopes marked with affidavits is necessary due to the quantity of voted absentee ballots received as set forth in Iowa Code section 53.23, subsection 3, paragraph "a."

For general elections, if the commissioner convenes the absentee and special voters precinct board pursuant to Iowa Code section 53.23, subsection 3, paragraph "c," to begin tabulation of absentee ballots."

BRIEF SUMMARY OF PETITIONER'S ARGUMENTS IN SUPPORT OF THE ACTION:

Iowa Code 53.23(c) currently indicates that the commissioner may convene the special precinct election board on the day before election day.

Petitioner believes that the legislature's primary intent in allowing the Monday before a general election for counting ballots, is to ensure that each county's Special Voters Precinct Board has adequate time to complete the count. Therefore, Auditor Miller contends that the proposed administrative rule comports with the fulfillment of the 10:00 PM deadline in that the Secretary of State must provide adequate time to each Special Voters Precinct Board to count absentee ballots.

BRIEF SUMMARY OF DATA:

This request is made in light of extreme and unusual circumstances. In this instance, the petitioner notes that with current rules, most counties in Iowa will not be able to finish tabulating absentee ballots by 10:00 p.m. on Tuesday, November 3.

Due to COVID-19, many counties expect to at least double the amount of absentee ballots they will count in this year's general election. With double the amount of absentee ballots to count, it is unreasonable to believe that all Iowa counties will be able to count twice the amount of absentee ballots on the Monday and Tuesday for this General Election.

In addition, the petitioner notes that due to social distancing space requirements and the difficulty in locating historically older individuals to work the Special Voters Precinct Board, it will likely be impossible for most Iowa counties to locate a large enough space and enough workers to tabulate all of the ballots by Tuesday, November 3 at 10:00 PM.

Given the highly unusual circumstances of COVID-19, an administrative rule is necessary in order to fulfill each county's legal requirement to count all ballots by Tuesday, November 3 at 10:00 PM.

NAMES AND ADDRESSES OF OTHER PERSONS/CLASS OF PERSONS AFFECTED BY OR INTERESTED IN THE PROPOSED ACTION:

Iowa Association of County Auditors
c/o Roxanna Moritz, Scott County Auditor
600 W 4th St
Davenport, IA 52801

auditor@scottcountyiowa.com

REQUEST FOR A MEETING PROVIDED FOR BY RULE 721-8.4(17a)

Iowa Administrative Rule 721—8.4(17A) "Agency consideration" states that

8.4(1) Within 30 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

8.4(2) Within 90 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition.

Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

8.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

Petitioner notes that less than 90 days exist from today to election day. This serves as official notice that the petitioner formally requests a brief and informal meeting between the petitioner and the agency to discuss the petition and that a decision be made in less than 90 days due to the unusual circumstances at hand.

Signature: Joel D Miller by Rebecca Date: Sept 8, 2020
Storawski, Deputy

Further communication should be directed to Auditor Miller. He can be reached at:

Joel D. Miller, Linn County Auditor
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Cedar Rapids, IA 52404

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