



William Duffey <wduffey.seb@gmail.com>

Rossi Complaint 3/21/22

1 message

McGowan, Charlene <cmcgowan@sos.ga.gov>
To: William Duffey <wduffey.seb@gmail.com>
Cc: "Koth, Sara" <skoth@sos.ga.gov>, "Hardin, Alexandra" <ahardin@sos.ga.gov>

Fri, Jul 21, 2023 at 11:37 AM

Judge Duffey,

I understand that you have asked Sara to open up a new case on Mr. Rossi's complaint against the Secretary of State's office regarding the posting of the county-level RLA results for the 2020 presidential election. I have instructed our investigations division that this office will not be opening up a case on this complaint, for several reasons.

First, Mr. Rossi's complaint fails to state a violation of the Georgia Election Code on its face. His complaint is that the Secretary's Elections Division posted the risk-limiting audit results that Fulton County reported to us on the Secretary's website, which he contends contain errors by Fulton County. Those results can be found here:

[2020 General Election Risk-Limiting Audit | Georgia Secretary of State](#)

The county's reported numbers for the RLA were posted to the website to be transparent and provide information to the public. The purpose of the RLA was to confirm the accuracy of the original tabulated results; the numbers reported in the RLA were not the final certified results. Conducting pre-certification audits is a county responsibility under OCGA 21-2-498, and the county bears all responsibility for following the applicable statutes and rules for how the audit is conducted and to report the results accurately. None of the code sections cited by Mr. Rossi apply here or state a claim for any violation against the Secretary's staff.

Second, and more importantly, the SEB has no jurisdiction over this complaint. As I explained in our June 14th meeting, the SEB has no oversight role over the Secretary of State. The reason for this is set forth in AG Opinion 2005-3:

[2005-3 | Office of the Attorney General \(georgia.gov\)](#)

This opinion states in part, "Georgia's Constitution and Election Code make it amply clear that the Secretary is charged with the primary responsibilities required to enforce the state's election laws. There is no indication in the law that the constitutional and statutory authority of this officer should be limited or substantively controlled by a board of political appointees who are not answerable to the electorate for their actions."

Furthermore, even assuming hypothetically that the complaint established a violation (and it does not), the SEB would need to refer the case to the Attorney General's office in order to pursue any legal action, and the AG's office does not take legal action against their own clients. Finally, the Secretary remains an ex officio member of the SEB under OCGA 21-2-30. For all of these reasons, the SEB cannot pursue complaints against the Secretary's office, and to do so would be unprecedented action by the Board.

I trust with this information that the Board will inform Mr. Rossi that no case will be opened on this matter. I'm happy to discuss this further with you at your convenience.

8/5/23, 6:59 AM

Gmail - Rossi Complaint 3/21/22

Sincerely,

Charlene

Charlene S. McGowan

General Counsel

Georgia Secretary of State

Direct: [REDACTED]

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