

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**August 26, 2019**

**Opinion No. 19-12**

**Release of Early and Absentee Voting Results**

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**Question**

When may a county election commission release early and absentee voting results?

**Opinion**

Absentee and early voting ballots may not be totaled—and thus may not be released—until all polling places in the county are closed. Under Tenn. Code Ann. § 2-7-127, polling places are closed only when all persons waiting in line to vote at the time set for closing have voted.

**ANALYSIS**

The statutory procedures governing Tennessee elections prohibit county election officials from totaling the absentee and early votes cast for any candidate until after all of the polls in the county have closed. Paper absentee and early votes submitted in Tennessee are initially placed in locked ballot boxes. *See* Tenn. Code Ann. §§ 2-6-109(c)(1) (in-person early voting); 2-6-202(g) (absentee voting by mail); *see also id.* § 2-6-311 (requiring absentee ballot boxes to be locked). These boxes are then delivered to the absentee ballot counting board at a designated time after the polls open on election day. *See id.* § 2-6-303(a)(1). Counties may also use electronic machines for early voting, and, if they do, county election officials must ensure the security of these machines to prohibit tampering. *See id.* § 2-6-104(c); *see also id.* § 2-6-104(d) (requiring the coordinator of elections to promulgate regulations that “include appropriate provisions for the security” of the machines used for early voting).

The total number of absentee and early ballots cast for any candidate—whether submitted on paper or through an electronic voting machine—may not be counted until after all polls in the county have closed. For both paper and electronic absentee and early ballots, Tenn. Code Ann. § 2-6-304 provides that “[i]n no event may the votes for any candidate be totaled until after all polls in the county are closed.” *Id.* § 2-6-304(c), (e). To ensure compliance with that statutory mandate with respect to electronic voting machines, election regulations require that votes “must be removed from the machines in such a manner so that no vote totals can be associated with any candidate at the time of removal.” Tenn. Comp. R. & Regs. 1360-2-18-.06.

The polls in a county are “closed” only after all persons waiting in line to vote at the time set for closing have voted. Tennessee Code Ann. § 2-7-127 makes this clear:

At the time set for the closing of the polling place, the officer of elections shall place one (1) of the election officials at the end of the

line of persons waiting to vote. No other person may then get in line to vote. The polls *shall be closed* as soon as all persons in the line ahead of the election official have voted regardless of when the polls opened.

(emphasis added). Tennessee Code Annotated § 2-3-201(a) establishes the “time set for the closing of the polling place”: 8:00 p.m. in counties in the eastern time zone and 7:00 p.m. in counties in the central time zone. Thus, all persons in line at that time may vote, and the polls are not closed until they have done so.

In sum, absentee and early voting ballots may not be totaled—and thus may not be released—until all polling places in the county are closed. Under Tenn. Code Ann. § 2-7-127, polling places are closed only when all persons waiting in line to vote at the time set for closing have voted.

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