



April 22, 2021

Paul Pate  
Iowa Secretary of State  
First Floor, Lucas Building  
321 E 12<sup>th</sup> St  
Des Moines, IA 50319

Dear Secretary Pate:

Iowa Code §39A.6 involves technical infractions for election misconduct. §39A.6(1) states:

*If the state commissioner or county commissioner becomes aware of an apparent technical violation of a provision of chapters 39 through 53, the state commissioner or county commissioner may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures.*

I, as Linn County's Commissioner of Elections, issue this letter as an official NOTICE OF TECHNICAL INFRACTION AND LETTER OF INSTRUCTION pursuant to Iowa Code §39A.6.

In mid-April 2021, your office sent out No Activity notices.

In an email from Heidi Burhans dated April 19, 2021, Ms. Burhans indicated that the

*The No Activity notices have been mailed. As in the past, the SOS ran the query to determine where no voter initiated activity has occurred, and then the application release this past weekend inactivated those voters receiving the No Activity notice.*

The email from Ms. Burhans further indicates:

*As required by Iowa Code, those made inactive include any voter who did not have vote credit applied to their record as part of the closing and posting of the recent general election in each county.*

During this process, grave errors were made. Your office incorrectly sent no activity mailers to unintended individuals and thus incorrectly inactivated hundreds, if not thousands, of voters.

Specific examples include:

- 42 Linn County registered voters under the age of 18 were inactivated. By Iowa law, 17 ½ year olds are allowed to register to vote, even if they could not vote at the November 3, 2020 General Election. However, all of these voters are now 'inactive.'
- Pending voters were inactivated
- Individuals who died since the November 3, 2020 and were thus cancelled – were instead made inactive voters.

Incorrectly inactivating voters is a chill to voters across the state. It sows distrust and uncertainty while also discouraging voters from voting.

As your office has noted, “[t]he law recognizes that election officials and indeed all public officials may occasionally err...,” but based on the email and written communications from your office, it is clear that you assumed the duty that your office should correctly mail out no activity notices, but did not do so.

Lest it be forgotten, under Senate File 413, updates to §39A.3, subsection 1, paragraph b, Code 2021, codify that it is now an aggravated misdemeanor to willfully fail to complete list maintenance. While I would hesitate to believe there was any gross willful intent to inactivate populations, I am concerned that you and your team have failed to perform duties. Under Senate File 413 updates to §39A.2, subsection 1, Code 2021, it states that willful failure to perform duties, or violate election law, would constitute a Class D felony.

*g. Failure to perform duties. As an election official, fails to perform duties prescribed by chapters 39 through 53, except for section 48A.41, or fails to follow or implement guidance issued pursuant to section 47.1, or performs those duties and responsibilities in such a way as to hinder or disregard the object of the law.*

In this instance, your office has “failed to follow...guidance... or performs those duties and responsibilities in such a way as to hinder... the object of the law.”

The object of the law is to inactivate individuals who have not voted. It is not to inactivate deceased individuals, to inactivate 17 ½ year old new registrants, or to inactivate pending voters.

Our office and other county offices must explain this error to angry and confused voters. In addition, this incorrect inactivation disincentives a population which already lacks trust in our election system.

As a remedy to ensure a similar technical infraction does not occur in future mailings, we would recommend that you put a procedure in place to ensure the Secretary of State’s Office employee(s) responsible for no activity mailers and communications verifies that the correct populations are being identified and mailed.

We would welcome the opportunity to work with you and your staff on best practices to prevent future violations of Iowa law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joel D. Miller". The signature is fluid and cursive, with the first name "Joel" and last name "Miller" clearly distinguishable.

Joel D. Miller  
Linn County Auditor and Commissioner of Elections