Election Workers versus Elected Officials

Many get confused when talking about Election Workers an Elected Officials, two very different positions in government and each has its own set of rules.

Definitions

- **Election Worker**
  - An individual hired by the State or Local Government to monitor, preside over, officiate, or assist in public elections.

- **Elected Official**
  - An individual who holds an office in an organization or government and participate in the exercise of authority
  - A person who is an official by virtue of an election

Employee or Independent Contractor

- Elected Official
  - A government elected official is an employee by federal law. Tax Code Section 3401 in defining an employee states: "*the term "employee" includes an **officer**, employee, or **elected official** of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing."*

- Election Worker
  - An Election worker is an employee based upon State Statutes and Federal law.
    - First we must look at State Statute. Under state statute the election worker is a public official (officer) required to take an oath of position, is appointed to the position by the Election Board and works under the supervision of the Election Board. The Election Board may appoint any voter to be an election worker.
    - Second we must look at Federal Law. Since they are a public officer under state statutes they are by federal law an employee. Under common law factors they would also be classified as an employee, the firm has the right to control their work.
  - Another consideration is who is the Employer
    - The employer is the firm that has the "Right" to control the actions of the worker. This is the government entity required by State Law to control the election, which could be the state, or a local government.
    - Could a contracted firm be the employer if they are making the payments to the election worker? The employer is the firm for whom the services are performed, in this case the governmental entity; the contracted firm is an agent of the government entity required to withhold employment taxes as if they were the employer, but the government entity is still the legal employer, per tax code section 3401.

Election workers are employees. We don't see individuals engaged in the business of sitting at a polling booth, confirming names against voter records, supplying their own voting booths, counting the results from their personally owned voting booths and providing the results to be combined with all the other enterprising individuals, each providing their own voting booths, counting their results, etc. They don't advertise to ensure that you get a better experience using their booth rather then the one next to them. They cannot guarantee results or state that they will count your vote twice.