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Honorable Beth Chapman
State Auditor
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Secretary of State – Voting – Voter
Registration Advisory Board – Voter
Registration

The Secretary of State is required to consult with and obtain advice from the Voter Registration Advisory Board (“Board”) when making decisions concerning the computerized statewide voter registration system.

The Secretary of State must consult with and obtain advice from the Board before making the decision to purchase a new statewide voter registration system.

When the Secretary of State needs the advice of or consultation with the Board on matters concerning the statewide voter registration list, the Secretary of State may discharge his or her statutory duties in this respect by attending the Board’s regular meetings or, if no such meeting is scheduled or if a decision must be made before the Board’s next regularly scheduled meeting, the Secretary of State should notify the chairperson, who may then call a special meeting of the Board.

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Dear Ms. Chapman:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Under §§ 17-4-210(a) & (c), may the Secretary of State act unilaterally, without the advice of the Voter Registration Advisory Board, in making a decision concerning the voter registration system for the state, and specifically, in making a decision to purchase a new statewide voter registration system?

2. If the answer to Question 1 is no, who is required to call this advisory meeting between the Secretary of State and the Voter Registration Advisory Board?

FACTS AND ANALYSIS

During the 2003 Regular Session, the Alabama Legislature passed Act 2003-313, implementing the requirements of the federal Help America Vote Act of 2002 ("HAVA"), Pub. L. 107-252. *See* 42 U.S.C.A. § 15403 (West 2004). Specifically, Act 2003-313 provides for the creation of a computerized statewide voter registration list as required by Section 303(a) of HAVA. Section 17-4-210(a) of the Code of Alabama provides for the implementation of this computerized statewide voter registration list:

The State of Alabama shall provide, through the Secretary of State, a nondiscriminatory, single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered by the Secretary of State, *with advice from the Voter Registration Advisory Board* and the President of the Alabama Probate Judges Association, which contains the name and registration information of every legally registered voter in the state.

ALA. CODE § 17-4-210(a) (Supp. 2004) (emphasis added).

In addition, section 17-4-210(c) of the Code of Alabama provides for the Board, which is to serve as an "oversight board" for the computerized statewide voter registration system. ALA. CODE § 17-4-210(c) (Supp. 2004). Originally, the Board was created to oversee the "statewide voter registration *file*." 1989 Ala. Acts No. 89-649, 1279 (emphasis added). This Office has previously stated that the Board has the "duty to oversee the establishment, operation, and maintenance of the statewide voter registration file." Opinion to James M. Campbell, State Representative, dated April 26, 1994, A.G. No. 94-00149. In conjunction with the implementation of the computerized statewide voter registration list, Act 2003-313 amended the duties of the Board to read as follows:

(1) To oversee the statewide voter registration list created in this chapter.

(2) To advise and consult with the Secretary of State concerning the statewide voter registration file maintenance system created in this chapter.

(3) To recommend to the Legislature and the Governor any needed improvements or legislation in regard to the statewide voter registration file.

(4) To make studies of conditions and problems pertaining to voter identification and registration in the state.

(5) To keep abreast of the latest developments in the field of voter identification and registration.

(6) To promote honesty, fairness, and integrity in lists of qualified voters, the voter registration process, and the election process in the State of Alabama.

ALA. CODE § 17-4-210(c) (Supp. 2004) (emphasis added).

As emphasized above, the Board is required to "oversee the statewide voter registration list" and "to advise and consult with the Secretary of State concerning the statewide voter registration system." ALA. CODE § 17-4-210(c) (Supp. 2004). The Board cannot fulfill these duties unless the Secretary of State meets with the Board before making decisions that concern the statewide voter registration system. Likewise, the Secretary of State cannot fulfill his or her official duty of establishing, maintaining, and administering the statewide voter

registration list “with advice from the Voter Registration Advisory Board” unless he or she meets with the Board to seek its advice. Accordingly, it is the opinion of this Office that the Secretary of State is statutorily required to consult with and obtain advice from the Board when making decisions concerning the computerized statewide voter registration system.

It is the understanding of this Office that the Secretary of State is preparing to purchase a new statewide voter registration system without consulting the Board. Because the decision to purchase a new statewide voter registration is a decision “concerning” the statewide voter registration system, the Secretary of State shall consult with and obtain advice from the Board before making that decision.

The statute does not state who shall call an advisory meeting between the Board and the Secretary of State. Nor does it state who is responsible for calling the Board’s regular meetings. Instead, the statute’s only requirements regarding Board meetings are that the Board “shall meet regularly at least once during each quarter and at such special meetings as may be called, from time to time, by the chairperson.” ALA. CODE § 17-4-210(c) (Supp. 2004). Because the law is silent regarding when the Board’s quarterly meetings will occur, the Board should set their regular meeting times by resolution. Henry M. Robert, III, *et al.*, *Robert’s Rules of Order Newly Revised* 88, ll. 22-27 (10th ed. 2000).

When the Secretary of State needs the advice of or consultation with the Board on matters concerning the statewide voter registration list, the Secretary of State may discharge his or her statutory duties in this respect by attending the Board’s regular meetings or, if no such meeting is scheduled or if a decision must be made before the Board’s next regularly scheduled meeting, the Secretary of State should notify the chairperson, who may then call a special meeting of the Board.

CONCLUSION

The Secretary of State is required to consult with and obtain advice from the Board when making decisions concerning the computerized statewide voter registration system.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Rushing Payne of my staff.

Sincerely,

TROY KING
Attorney General

By:


BRENDA F. SMITH
Chief, Opinions Division

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