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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable David Grimes
Member, House of Representatives
District 72, Montgomery County
2870 Zelda Road
Montgomery, Alabama 36106

Honorable Thomas T. Gallion, III
Attorney, Montgomery County Commission
305 South Lawrence Street
Montgomery, Alabama 36104

Help America Vote Act of 2002 - County
Commissions - Secretary of State - Voting
Machines - Vote-Counting Machines -
Funds

The Help America Vote Act ("HAVA") and
Act 2003-313 do not repeal or modify
section 17-24-3, nor do they give the
Secretary of State authority to repeal or
modify section 17-24-3.

The county governing body remains
responsible for selecting the electronic
vote-counting system for that county.

Each voting system selected by each
county must satisfy the electronic vote-
counting system requirements in section
17-24-3(b) and the HAVA voting-system
requirements found in section 17-25-4(a) -
(f). If the voting system selected by the
county meets these two sets of
requirements, the purchase of this
equipment shall be approved for
reimbursement from the Help America
Vote Fund by the Secretary of State.

The Secretary of State does not have the authority to require the county to select a certain voting system or to designate a certain vendor or several vendors from whom the county must purchase its electronic vote-counting systems. Moreover, the Secretary of State does not have authority to prevent the county governing bodies from purchasing its electronic vote-counting systems from certain vendors.

Alabama is not required to distribute HAVA funds to the counties based on any specific formula; instead, Alabama must distribute the HAVA funds in accordance with the state plan.

Dear Sirs:

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

QUESTIONS

1. May the Secretary of State use his or her position as the state's chief election official in the administration of HAVA and any state laws enacted to implement HAVA to repeal or amend the authority granted to county commissions in section 17-9-2 related to the conduct of county elections?

2. May the Secretary of State, as the state's chief election official under Act 2003-313, withhold a county's share of the HAVA implementation funds because the county acted independently under the authority of section 17-9-2 to continue to use its current voting system rather than expending the funds necessary to adopt the unified voting system desired by the Secretary of State?

3. May the Secretary of State designate a certain vendor or vendors for, or exclude consideration of other vendors from, the purchase of voting equipment for a unified statewide voting system, or do the county commissions retain the authority (under section 17-9-2) to select vendors for the purchase of voting equipment to be used in each respective county?

FACTS AND ANALYSIS

Your request refers to section 17-9-2 of the Code of Alabama, which gives the county governing body the authority and discretion to select *voting machines* for the county. Because electronic vote-counting systems are now used, the request should have referred to section 17-24-3 of the Code of Alabama, which gives the county governing body the authority and discretion to select *electronic vote-counting systems* for the county. Section 17-24-3 provides, in part, as follows:

The governing body of any county or municipality or other political subdivision of the state may, in its discretion, by adoption of an appropriate resolution, authorize, adopt, and direct the use of electronic vote counting systems for use in all elections held in such county or municipality or other political subdivision or any portion thereof; and such resolution, a copy of which shall be filed with the Secretary of State, shall specify the particular type of equipment to be used and a procedure for implementation.

ALA. CODE § 17-24-3(a) (1995). In addition, section 17-24-3(b) contains requirements that electronic vote-counting systems must meet. ALA. CODE § 17-24-3(b) (1995). Those requirements include permitting the voter to vote in secret, permitting the voter to vote a straight political party ticket in one operation, rejecting votes that are cast in excess of what the voter is entitled to cast, and accurately counting votes. *Id.* Each voting system must therefore satisfy these requirements.

During the 2003 Regular Session, the Alabama Legislature passed Act 2003-313, implementing the requirements of the federal Help America Vote Act of 2002, Pub. L. 107-252. *See* 42 U.S.C.A. § 15403 (West 2004). Act 2003-313 amended many of the election statutes, but it did not amend section 17-24-3.

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Act 2003-313 did, however, provide new standards for voting systems, which are codified in section 17-25-4 of the Code of Alabama. Your corrected request asks whether HAVA and Act 2003-313 repeal or modify section 17-24-3 or give the Secretary of State authority to repeal or modify section 17-24-3.

The title of Act 2003-313 states that the purpose of the act is “to provide that each voting system used in an election shall satisfy certain federal requirements on or before January 1, 2005.” 2003 Ala. Acts 2003-313. Section 17-25-4 of the Code of Alabama lists the requirements that each voting system must meet to comply with the federal HAVA requirements. ALA. CODE § 17-25-4 (Supp. 2004). This section provides that a voter must be able to vote in a private and independent manner, must be able to change the ballot or correct an error in the ballot before it is counted, and must be notified if the voter has selected more than one candidate for any office. Some of these requirements can be met by providing a voter education program. Section 17-25-4 also requires the voting system to produce a record with an audit capacity, to be accessible for individuals with disabilities, to satisfy the alternative-language accessibility requirements of the Voting Rights Act of 1965, and to comply with the error rate standards established under section 3.2.1 of the Federal Election Commission’s voting system standards. *Id.* Further, section 17-25-4 requires the Secretary of State to adopt “uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote. . . .” *Id.* The federal HAVA requirements located in section 17-25-4 provide requirements that each voting system must meet in addition to those set out in section 17-24-3.

HAVA expressly authorizes states to provide requirements that are stricter than the federal requirements:

The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 15545 of this title.

42 U.S.C.A. § 15484 (West 2004). Consistent with this provision, section 17-25-4(g) requires the Secretary of State to “recommend to the Legislature on or before January 1, 2005, a uniform polling system, which includes machine

capabilities to count each ballot at the polling place, a uniform ballot and prepare necessary legislation for implementation.” ALA. CODE § 17-25-4(g) (Supp. 2004). Currently, the Legislature has not implemented a uniform polling system. If the Legislature does, however, implement the legislation for a uniform polling system, that legislation would create a third set of requirements that each voting system would also have to satisfy.

In interpreting statutory language, a court does not look to one word or one provision in isolation, but instead looks to the whole statutory scheme for clarification and contextual reference. *U. S. v. McLemore*, 28 F. 3d 1160 (11th Cir. 1994); *Siegelman v. Ala. Ass'n of School Bds*, 819 So. 2d 568, 582 (Ala. 2001); *Wal-Mart Stores, Inc. v. Patterson*, 816 So. 2d 1, 6 (Ala. 2001). Where more than one Code section is involved, each should be construed in harmony with the other Code sections in effect, so far as is practical. *Kinard v. Jordan*, 646 So. 2d 1380, 1383 (Ala. 1994).

HAVA and Act 2003-313 do not repeal or modify section 17-24-3, nor do they give the Secretary of State authority to repeal or modify section 17-24-3. Instead, HAVA and Act 2003-313 provide additional requirements that each voting system must satisfy in addition to the electronic vote-counting system requirements listed in section 17-24-3. Because section 17-24-3 was not repealed or modified, the county governing body remains responsible for selecting the electronic vote-counting system for that county.

Each voting system selected by each county must satisfy the electronic vote-counting system requirements in section 17-24-3(b) and the HAVA voting-system requirements found in section 17-25-4(a) – (f). If the voting system selected by the county meets these two sets of requirements, the purchase of this equipment “shall be approved for reimbursement from the Help America Vote Fund” by the Secretary of State. ALA. CODE § 17-25-4(h) (Supp. 2004).

The Legislature did not authorize the Secretary of State to require the county governing bodies to select a certain voting system or to select a voting system from a certain vendor or several vendors. On the contrary, the Legislature contemplated the use of multiple types of voting systems in the State. For example, section 17-25-4(f) requires the Secretary of State to “adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for *each category of voting system used in the state.*” ALA. CODE § 17-25-4(f) (Supp. 2004) (emphasis added).

In addition, the title of Act 2003-313 provides further evidence of the Legislature’s intent. One can look to the title of an act as an aid to statutory

construction. *Jordan v. Reliable Life Ins. Co.*, 589 So. 2d 699 (Ala. 1991). The title of Act 2003-313 states that the purpose of the act is “to provide that each voting system used in an election shall satisfy certain federal requirements on or before January 1, 2005.” 2003 Ala. Acts 2003-313. As the title states, the purpose of this act is to ensure that each voting system complies with federal requirements, not to direct that each county should purchase the same voting system or purchase voting systems from the same vendor or vendors. Moreover, there is no language in HAVA or Act 2003-313 that authorizes the Secretary of State to require the county governing bodies to purchase a certain voting system or to purchase voting systems from a certain vendor or several vendors.

Although the Secretary of State must ensure that the voting systems purchased by the county governing bodies satisfy both sets of requirements discussed above, the Secretary of State does not have the authority to require the county to select a certain voting system or to designate a certain vendor or several vendors from whom the county must purchase its electronic vote-counting systems. Moreover, the Secretary of State does not have the authority to prevent the county governing bodies from purchasing its electronic vote-counting systems from certain vendors.

CONCLUSION

HAVA and Act 2003-313 do not repeal or modify section 17-24-3, nor do they give the Secretary of State authority to repeal or modify section 17-24-3. The county governing body remains responsible for selecting the electronic vote-counting system for that county.

Each voting system selected by each county must satisfy the electronic vote-counting system requirements in section 17-24-3(b) and the HAVA voting-system requirements found in section 17-25-4(a) – (f). If the voting system selected by the county meets these two sets of requirements, the purchase of this equipment shall be approved for reimbursement from the Help America Vote Fund by the Secretary of State.

The Secretary of State does not have the authority to require the county to select a certain voting system or to designate a certain vendor or several vendors from whom the county must purchase its electronic vote-counting systems. Moreover, the Secretary of State does not have authority to prevent the county governing bodies from purchasing its electronic vote-counting systems from certain vendors.

QUESTION

4. In arriving at the total monies due to Montgomery County to perform its duties according to section 17-9-2, should not the State adhere to the HAVA formula in its creation of the grants on a “per-voter registration” basis?

FACTS AND ANALYSIS

As noted earlier, section 17-24-3 should be substituted for section 17-9-2 in your question. Your request asks whether the State should adhere to the HAVA formula in its creation of the grants on a “per-voter registration” basis. Nothing in HAVA, however, refers to grants allocated on a “per-voter registration” basis. As your request notes, HAVA does create a formula in which funds are to be allocated *to the states* on a “voting age population” basis. 42 U.S.C.A. § 15402 (West 2004) (emphasis added). This formula, though, was not developed to be used by the states in allocating funds to the counties. Instead, funds are to be allocated to the counties based upon the provisions of the state plan.

HAVA requires each state to develop a state plan that describes how that state will comply with HAVA’s requirements and utilize HAVA funds. 42 U.S.C.A. § 15403 (West 2004). HAVA also directs that this plan must be published for public notice and comment. 42 U.S.C.A. § 15406 (West 2004). In this state plan, each state is required to provide a variety of information, including the following:

(1) How the State will use the requirements payment to meet the requirements of subchapter III of this chapter, and, if applicable under section 15401(a)(2) of this title, to carry out other activities to improve the administration of elections.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of--

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(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

42 U.S.C.A. § 15404 (West 2004). Thus, each state must come up with its own method for distributing payments to local government units. As HAVA states, “[t]he specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the State.” 42 U.S.C.A. § 15403 (West 2004).

Accordingly, Alabama is not required to distribute HAVA funds to the counties based on any specific formula; instead, Alabama must distribute the HAVA funds in accordance with the state plan.

CONCLUSION

Alabama is not required to distribute HAVA funds to the counties based on any specific formula; instead, Alabama must distribute the HAVA funds in accordance with the state plan.

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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