



ALAN WILSON
ATTORNEY GENERAL

August 5, 2011

Marci Andino, Executive Director
SC Election Commission
PO Box 5987
Columbia, SC 29250

Dear Ms. Andino:

We received your letter requesting an opinion of this Office concerning whether the State Election Commission has the authority to contract with the vendor that is developing the new statewide voter registration system for the purpose of marketing the system to other states.

As background, you explained that the State Election Commission is developing a new statewide voter registration system to be used by all county boards of registration and elections. Once the system is finished, the State will own the system (code) and have all rights associated with ownership. Several other states have expressed interest in using the system. You have indicated that sharing the system with other states could be beneficial in that it helps share costs.

Law/Analysis

The State Election Commission was created by the enactment of S.C. Code § 7-3-10 and is to be composed of five members, with the Governor appointing one of the members to serve as chairman. S.C. Code § 7-3-10(d) states that the "Commission shall have the powers and duties as enumerated in this title."

S.C. Code § 7-3-20 created the position of Executive Director; the duties of the office are explained as follows:

- (A) **The State Election Commission shall elect an executive director who shall be directly responsible to the commission and who shall serve at the pleasure of the commission. The executive director shall be the chief administrative officer for the State Election Commission.**
- (B) The executive director shall receive such compensation and employ such staff, subject to the approval of the State Election Commission, as may be provided by law.
- (C) The executive director shall:

- (1) **maintain a complete master file of all qualified electors by county and by precincts;**
- (2) delete the name of any elector:
 - (a) who is deceased;
 - (b) who is no longer qualified to vote in the precinct where currently registered;
 - (c) who has been convicted of a disqualifying crime;
 - (d) who is otherwise no longer qualified to vote as may be provided by law; or
 - (e) who requests in writing that his name be removed;
- (3) **enter names on the master file as they are reported by the county registration boards;**
- (4) furnish each county registration board with a **master list of all registered voters in the county**, together with a copy of all registered voters in each precinct of the county, at least ten days prior to each election. The precinct copies shall be used as the official list of voters;
- (5) maintain all information furnished his office relating to the inclusion or deletion of names from the master file for four years;
- (6) purchase, lease, or **contract for the use of such equipment as may be necessary to properly execute the duties of his office, subject to the approval of the State Election Commission;**
- (7) secure from the United States courts and federal and state agencies available information as to persons convicted of disqualifying crimes;
- (8) **obtain information from any other source which may assist him in carrying out the purposes of this section;**
- (9) **perform such other duties relating to elections** as may be assigned him by the State Election Commission;
- (10) furnish at reasonable price any precinct lists to a qualified elector requesting them;
- (11) serve as the chief state election official responsible for implementing and coordinating the state's responsibilities under the National Voter Registration Act of 1993; and
- (12) serve as the **chief state election official responsible for implementing and enforcing the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)**, as set forth in the United States Code, Title 42, Section 1973ff, et seq.

S.C. Code § 7-3-20 (emphasis added).

“If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resorting to subtle or forced

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construction which limit or expand the statute's operation." Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007).

The statute above is clear that the Executive Director may "contract for the use of such **equipment** as may be necessary to properly execute the duties of his [or her] office." S.C. Code § 7-3-20(C) (emphasis added). The duties of the executive director such as providing a master list of all voters by county, serving as the chief administrative officer for the State Election Commission, and serving as chief state election official who is responsible for upholding the Uniformed and Overseas Citizens Absentee Voting Act are closely related to the new statewide voter system that will be used by all county boards of registration and elections. In other words, the duties of the executive director are related to voter registration. It is our understanding that a **system** must be purchased for the new voter registration process to take place. The question now turns to whether the new system would be considered equipment under S.C. Code § 7-3-20(C).

As stated in many prior opinions, "investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." Ops. S.C. Atty. Gen., September 14, 2006; April 6, 2006. Hence, it would be beyond the scope of this opinion to determine the nature or classification of the new system; therefore, a court must ultimately determine if the new system or code would be considered "equipment" within the context of S.C. Code § 7-3-20(C).

Nevertheless, based on our understanding of the new system, as described in your letter, and the ordinary definition of "equipment," it would be reasonable to find that the word "equipment" used in S.C. Code § 7-3-20(C) is inclusive enough to include the new system. Black's Law Dictionary defines "equipment" as "[t]he articles or implements used for a specific purpose or activity (esp. a business operation)." Black's Law Dictionary (9th ed. 2009), equipment. *See also*, S.C. Code § 59-127-490(2) ("equipment" is defined as "items with a useful life of at least fifteen years").

It is our opinion that one can logically imply that the General Assembly intended the Executive Director, with approval of the State Election Commission, to have the discretion to contract for items or systems necessary to execute the duties of his or her office. *See*, S.C. Code § 7-3-20(C); Op. S.C. Atty. Gen., September 22, 1978 (" . . . the General Assembly did not provide for any specific procedure for reviewing petitions. Thus, the General Assembly must have intended that the election authorities, and most importantly the State Election Commission, would have discretion to adopt appropriate procedures to execute this duty. Abel v. Bell, 220 S.C. 1, 91 S.E.2d 548 (1956); Davidson v. Eastern Fire and Casualty Ins. Co., 245 S.C. 472, 141 S.E.2d 135 (1965); 2 Am.Jur.2d, 'Administrative Law,' §§ 191, 233 to 255").

In a recent opinion of this Office, dated June 23, 2011, we explained that Proviso 79.14 has not been adopted by the Conference Committee, and therefore, we will not comment upon it. However, we acknowledged that Proviso 79.14 states that "[t]he **State Election Commission is**

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authorized to enter into a contract with the state committee of a certified political party for the purpose of conducting the 2012 Presidential Preference Primaries.” Op. S.C. Atty. Gen., June 23, 2011 (emphasis added). Additionally, S.C. Code § 7-13-420 states that “[t]he printer with whom the **executive director, commissioners of election or other authority, as the case may be, shall contract** for the printing of official ballots . . .” S.C. Code § 7-13-420 (emphasis added). The above proviso and S.C. Code § 7-13-420 indicate that the State Election Commission and executive director respectively have authority to contract in specific situations where statutory authority is expressly or implicitly given.

Conclusion

It is the opinion of this Office that the Executive Director, upon approval of the State Election Commission, has authority to contract for items necessary to execute the duties of his or her office. S.C. Code § 7-3-20(C) explains that the executive director shall “contract for the use of such equipment as may be necessary to properly execute the duties of his office.” Considering the ordinary definition of “equipment” includes “[t]he articles or implements used for a specific purpose or activity,” it would be reasonable to find that the new system or code could be classified as equipment. The executive director has express authority to contract for the use of equipment; the system would likely be considered equipment; the executive director’s duties include managing the list of all registered voters by county; the contract at issue regarding marketing of the new system is closely tied to the use of the necessary equipment for voter registration and the general duties of the executive director.

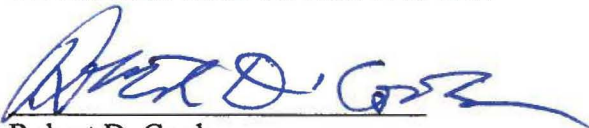
In other words, since the activities of S.C. Code § 7-3-20(C) and the executive director’s duties, specifically managing voter registration lists, are so closely related to marketing the system, it is the opinion of this office that the executive director has implied authority to contract with a vendor for the purpose of marketing the system to other states.

Sincerely,



Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General