

**01-016**

**ELECTIONS: FEDERAL, COMMONWEALTH AND LOCAL OFFICERS — ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT.**

**York County special election to be held November 6, 2001, to fill vacated position on board of supervisors must be conducted based on election districts existing at time of election. Election following redistricting must be conducted based on new district that most closely approximates district from which supervisor originally was elected.**

The Honorable Melanie L. Rapp  
The Honorable Harvey B. Morgan  
Members, House of Delegates  
April 18, 2001

You inquire regarding the impact of the decennial redistricting of election districts on the York County special election to be held on November 6, 2001, pursuant to § 24.2-226 of the *Code of Virginia*.

You relate that the purpose of the special election is to fill a vacancy occurring on the York County Board of Supervisors due to a supervisor's election to the House of Delegates. You advise that the supervisor resigned from the York County Board of Supervisors effective January 3, 2001. Thereafter, the York County Board of Supervisors petitioned the circuit court to issue a writ of election for a special election to fill the board vacancy in the supervisor's election district for the remainder of the unexpired term. The writ of election was issued on January 10, 2001. You relate that the applicable statutory provisions do not directly answer your question regarding whether the election must be conducted based on the election district as it existed on January 4, 2001, the date on which the vacancy occurred. You note that York County must act quickly to complete the decennial reapportionment in the election district prior to the special election.

Section 24.2-226(A) provides that any vacancy on a board of supervisors must be filled by special election. The special election is to be held at "the next ensuing general election ... in November."<sup>1</sup> The individual elected at the special election completes the remaining portion of the term of the board member that left office.<sup>2</sup> In addition, "[w]hen a vacancy occurs in a local governing body ..., the remaining members ..., within forty-five days of the office becoming vacant, *shall* appoint a qualified voter of the

election district in which the vacancy occurred to fill the vacancy."<sup>3</sup> If the governing body fails to make the appointment within forty-five days, the circuit court must make the appointment.<sup>4</sup> Consequently, there is virtually no interruption in the representation on the board of supervisors for the citizens of the affected election district.

Article VII, § 5 of the Constitution of Virginia provides that, if the members of the governing body of a county are elected by district, the governing body of the county shall periodically "reapportion the representation in the governing body among the districts." Ordinances adopted by county governing bodies to accomplish the decennial redistricting of districts must take effect immediately upon passage.<sup>5</sup> When a decennial redistricting occurs, § 24.2-311(B) requires the members of the governing body in office on the effective date of the redistricting to complete their terms of office. The election of members to the governing body to succeed members in office on the effective date of the redistricting must be held "at the general election next preceding the expiration of the terms of office of the incumbent members."<sup>6</sup> The general election must be conducted on the basis of the districts as comprised following the decennial redistricting.<sup>7</sup>

In 1991, the General Assembly requested the Virginia Code Commission to study and revise Title 24.1 and to report its findings to the Governor and the 1993 Session of the General Assembly in the form of a recodified title.<sup>8</sup> The drafting note in the Code Commission's report, following § 24.2-311, provides:

The rationale for using new districts to fill vacancies is based on the practical workings of the election system. The decennial redistricting involves changes in congressional, state legislative, and local governing body districts in the year following the census, 1991, 2001, etc. Precinct lines are redrawn simultaneously to accommodate the new election district lines and to revise the precincts to meet the state law minimum and maximum size requirements. These changes are entered into the state system so that registered voters are properly assigned to their new precincts and districts and so that the registered voter lists used to run elections will be ready for the first election following redistricting. When this information on new precincts and districts is entered into the state system, the old information on the precincts and districts is automatically deleted. Voters are advised of their new districts and precincts.<sup>[9]</sup>

The primary goal of statutory construction "is to ascertain and give effect to legislative intent."<sup>10</sup> In addition, statutes should not be construed to

frustrate their purpose.<sup>11</sup> The principles of statutory construction require that statutes be harmonized with other existing statutes, if possible, to produce a consistently logical result that gives effect to the legislative intent.<sup>12</sup>

It is, therefore, my opinion that the special election to be held on November 6, 2001, to fill the vacated position on the board of supervisors must be conducted based on the election districts existing at the time of the election. If the decennial redistricting has occurred and is precleared by the United States Department of Justice in accordance with § 5 of the Voting Rights Act,<sup>13</sup> I am of the opinion that the election must be conducted based on the new district that most closely approximates the old district from which the supervisor originally was elected to the board of supervisors.

<sup>1</sup>Va. Code Ann. § 24.2-226(A) (Michie Repl. Vol. 2000).

<sup>2</sup>*See id.*

<sup>3</sup>Va. Code Ann. § 24.2-228(A) (Michie Repl. Vol. 2000) (emphasis added). The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory. *See Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281 (1959) (noting that "shall" is word of command, used in connection with mandate); *see also Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that "shall" generally indicates procedures are intended to be mandatory, imperative or limited); *Op. Va. Att'y Gen.*: 1997 at 16, 17; 1996 at 20, 21; 1991 at 126, 126, and opinions cited therein; *id.* at 127, 129, and opinions cited therein.

<sup>4</sup>Section 24.2-228(A).

<sup>5</sup>Va. Code Ann. § 24.2-311(B) (Michie Repl. Vol. 2000).

<sup>6</sup>*Id.*

<sup>7</sup>*See id.*

<sup>8</sup>*See* 1991 Va. Acts S.J. Res. 242, at 2135. The Virginia Code Commission rendered its report, resulting in the recodification of Title 24.1. 5 H. & S. Docs., *Report of the Virginia Code Commission on the Recodification of Title 24.1 of the Code of Virginia*, S. Doc. No. 25 (1993) [hereinafter S. Doc. No. 25].

<sup>9</sup>S. Doc. No. 25, *supra*, at 50.

<sup>10</sup>*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *see also* 1993 *Op. Va. Att'y Gen.* 237, 239.

<sup>11</sup> See 1982-1983 Op. Va. Att'y Gen. 309, 311 (stating that illogical result would frustrate purpose of statute).

<sup>12</sup> See 2A Norman J. Singer, Sutherland Statutory Construction § 46:05 (West 6<sup>th</sup> ed. 2000); 1995 Op. Va. Att'y Gen. 118, 120.

<sup>13</sup> See 42 U.S.C.A. § 1973c (West 1994).

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