

**OP. NO. 03-068**

**ELECTIONS: GENERAL PROVISIONS AND ADMINISTRATION – LOCAL ELECTORAL BOARDS – REGISTRARS.**

**CONSTITUTION OF VIRGINIA: FRANCHISE AND OFFICERS (ELECTORAL BOARDS; REGISTRARS AND OFFICERS OF ELECTION).**

**Prohibited political activities of local electoral board members and general registrars include (1) holding elective office while serving in appointive office; (2) serving as chairman of state, local or district level political party committee (electoral board member only); (3) serving as chairman of political party or as any other officer of state, local or district level political party committee (general registrar only); (4) serving as paid worker, and in case of general registrar, volunteer, for candidate for nomination or election to office filled by election in whole or in part by qualified voters of jurisdiction served by electoral board member or registrar; and (5) being paid or volunteering to solicit signatures for nominating petitions for candidates for public office in public building owned or leased by county or city served by electoral board (electoral board member only). Local electoral board members and general registrars should perform official duties in nonpartisan fashion. When not performing official duties, such officers may participate in partisan political activities not in conflict with prohibitions in §§ 24.2-106, 24.2-106.1, 24.2-110.**

Mr. William B. Harvey  
Secretary, Albemarle County Electoral Board  
October 17, 2003

#### **Issue Presented**

The issue presented is to what extent a local electoral board member and a general registrar may participate in partisan political activities.

#### **Response**

It is my opinion that § 24.2-106 prohibits the following political activities of a local electoral board member: (1) holding elective office while serving in his appointive office; (2) serving as chairman of a state, local or district level political party committee; and (3) serving as a paid worker for a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of the jurisdiction served by the electoral board member. Additionally, it is my opinion that local electoral board members are prohibited from being paid or from volunteering to solicit "signatures for nominating petitions for candidates for public office in any public building owned or leased by the county or city served by the electoral board."<sup>2</sup>

It is my opinion that § 24.2-110 prohibits the following political activities of a general registrar: (1) holding elective office while serving in his appointive office; (2) serving as chairman of a political party or as any other officer of a state, local or district level political party committee; and (3) serving as a paid or volunteer worker for a candidate for nomination or election to an office filled by election in

whole or in part by the qualified voters of the jurisdiction served by the general registrar.

It is further my opinion that local electoral board members and general registrars should perform their official duties in a nonpartisan fashion. When not performing those duties, such officers may participate in partisan political activities that do not conflict with the prohibitions set forth in §§ 24.2-106, 24.2-106.1 and 24.2-110.

### **Applicable Law and Discussion**

Article II, § 8 of the Constitution of Virginia requires each county and city to have an electoral board composed of three members. The Constitution also requires the electoral board in each county and city to "appoint the officers of election and general registrar for its county or city."<sup>3</sup> In the appointment of electoral boards and officers of election, "representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and the next highest number of votes."<sup>4</sup> The Constitution also prohibits dual officeholding by a general registrar.<sup>5</sup>

Sections 24.2-106 through 24.2-109 govern the appointment, removal, qualifications, and general duties of local electoral board members; §§ 24.2-109(A), 24.2-110 and 24.2-114 govern the appointment, removal, qualifications, and duties of a general registrar.

The 1995 Session of the General Assembly amended §§ 24.2-106 and 24.2-110 to prohibit certain partisan political activities by local electoral board members and registrars.<sup>6</sup> Prior to this amendment, the Code was silent as to the partisan political activities of a local electoral board member and general registrar. Section 24.2-106 provides, in part:

No member of an electoral board shall be eligible to offer for or hold an office to be filled in whole or in part by qualified voters of his jurisdiction. If a member resigns to offer for or hold such office, the vacancy shall be filled as provided in this section.

*No member of an electoral board shall serve as the chairman of a state, local or district level political party committee or as a paid worker in the campaign of a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of the jurisdiction of the electoral board. [Emphasis added.]*

Section 24.2-110 provides, in part:

No general registrar shall be eligible to offer for or hold an office to be filled by election in whole or in part by the qualified voters of his jurisdiction at any election held during the time he serves as general registrar or for the six months thereafter.

....

*No general registrar shall serve as the chairman of a political party or other officer of a state, local or district level political party committee. No general registrar shall serve as a paid or volunteer worker in the campaign of a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of his jurisdiction. The restrictions of this paragraph shall apply to paid assistant registrars but shall not apply to unpaid assistant registrars. [Emphasis added.]*

A 1978 opinion of the Attorney General considers whether a local electoral board member may serve as a campaign manager of a candidate. As a generally accepted practice of political campaigns in the Commonwealth, campaign managers usually are compensated for their campaign management services. The 1978 opinion determined that there is no requirement that local electoral board members abstain from participation in partisan politics during their appointment.<sup>7</sup> Consequently, the opinion concludes that there is no prohibition against a local electoral board member serving as a campaign manager for a candidate.<sup>8</sup>

In 1995, the General Assembly amended § 24.2-106 to specifically prohibit certain partisan political activity by local electoral board members.<sup>9</sup> When amending a statute, the General Assembly is presumed to have had knowledge of the Attorney General's interpretation of that statute in its existing form.<sup>10</sup> When new provisions are added to existing legislation by amendment, a presumption arises that, "in making the amendment the legislature acted with full knowledge of, and in reference to, the existing law upon the same subject and the construction placed upon it by the courts."<sup>11</sup> It is presumed further that the legislature acted purposefully with the intent to change existing law.<sup>12</sup> Therefore, the General Assembly specifically addressed the 1978 opinion by adding language in 1995 specifically prohibiting certain partisan political activities of local electoral board members. To the extent the 1978 opinion concludes that a local electoral board member may be a paid campaign manager, the 1995 amendment to § 24.2-106 specifically prohibits a local electoral board member's service "as a paid worker in the campaign of a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of [his] jurisdiction."

The amendatory language enacted in 1995 in §§ 24.2-106 and 24.2-110, however, is limited in its scope. As the 1978 opinion recognizes, local electoral board members represent the political parties, and as such, the appointments are political in nature.<sup>13</sup> Moreover, local electoral boards are required to make partisan selections, based on the previous election results, in appointing officers of election.<sup>14</sup> Consequently, partisanship is present throughout the oversight of the Commonwealth's electoral system. The partisan nature of selecting participants to conduct elections, however, does not require those individuals to perform their duties in a partisan fashion.

The plain language of §§ 24.2-106 and 24.2-110 prohibits the holding of an elective office by a local electoral board member and a general registrar while serving in their official capacities in their appointive offices. Section 24.2-106 prohibits a local electoral board member from serving as chairman of a state, local or district level political party committee. Section 24.2-110 prohibits a general registrar from serving as the chairman of a political party or as any other officer of a state, local or district level political party committee.

You advise that you cannot identify any change in the applicable statutory provisions that bars a local electoral board member from accepting a paid campaign position. Where the language of a statute is free from ambiguity, its plain meaning will control.<sup>15</sup> Sections 24.2-106 and 24.2-110 clearly and unequivocally prohibit a local electoral board member or a general registrar from working in a compensated position for a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of his county or city. Moreover, the plain language of § 24.2-110 prohibits a general registrar from working as a volunteer for "a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of his jurisdiction."

An "office filled by election in whole or in part by the qualified voters"<sup>16</sup> of the subject jurisdiction includes all federal, state and local elective offices for which qualified voters in the locality cast votes. For instance, this includes elections conducted in the State Senate and House of Delegates districts in which the county or city served by the electoral board member or registrar is located. Elections for President of the United States, United States Senate, Governor, Lieutenant Governor, and Attorney General are also included. The prohibitions in §§ 24.2-106 and 24.2-110 also extend to elections conducted in United States House of Representatives districts in which the locality served by the electoral board member or registrar is located.

A local electoral board member and a general registrar are not prohibited, however, from serving as either paid or volunteer workers for candidates for local office, the State Senate or House of Delegates, or the House of Representatives in localities that are not served by the electoral board member and the registrar and for which the qualified voters in their county or city do not cast votes.<sup>17</sup> For instance, a registrar is permitted to work as a volunteer for a candidate for local office in a neighboring locality that is not served by that registrar. A general registrar is prohibited, however, from volunteering to work in a neighboring locality for a candidate for state or federal office if the qualified voters in the registrar's locality also cast votes for that particular office. I note that the 2003 General Assembly again altered the conclusion of the 1978 opinion by enacting § 24.2-106.1, providing that "[n]o member of an electoral board or their office staff shall solicit or assist in the solicitation of signatures for nominating petitions for candidates for public office in any public building owned or leased by the county or city served by the electoral board." Thus, this type of volunteer activity by an electoral board member is prohibited.

A local electoral board member or general registrar is not required to be apolitical while not serving in his official capacity. Additionally, §§ 24.2-106 and 24.2-110 do not prohibit a local electoral board member or a general registrar from contributing to and attending fund-raising events for any candidate or political party; however, § 24.2-110 does prohibit a general registrar from volunteering at certain candidate-sponsored fund-raising events.<sup>18</sup> An electoral board member or general registrar still may participate in political party functions short of holding the elective offices proscribed by §§ 24.2-106 and 24.2-110. For instance, a general registrar and electoral board member may vote in a political party primary, attend regular party meetings, and participate in party conventions, canvasses, party auxiliaries, and the like.

When performing the duties of a local electoral board member or general registrar, such officers should conduct their duties in a nonpartisan fashion.<sup>19</sup> When not performing those duties, such officers may participate in partisan

political activities that do not conflict with the prohibitions set forth in §§ 24.2-106 and 24.2-110.

### Conclusion

Accordingly, it is my opinion that § 24.2-106 prohibits the following political activities of a local electoral board member: (1) holding elective office while serving in his appointive office; (2) serving as chairman of a state, local or district level political party committee; and (3) serving as a paid worker for a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of the jurisdiction served by the electoral board member. Additionally, it is my opinion that local electoral board members are prohibited from being paid or from volunteering to solicit "signatures for nominating petitions for candidates for public office in any public building owned or leased by the county or city served by the electoral board."<sup>20</sup>

It is my opinion that § 24.2-110 prohibits the following political activities of a general registrar: (1) holding elective office while serving in his appointive office; (2) serving as chairman of a political party or as any other officer of a state, local or district level political party committee; and (3) serving as a paid or volunteer worker for a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of the jurisdiction served by the general registrar.

It is further my opinion that local electoral board members and general registrars should perform their official duties in a nonpartisan fashion. When not performing those duties, such officers may participate in partisan political activities that do not conflict with the prohibitions set forth in §§ 24.2-106, 24.2-106.1 and 24.2-110.<sup>21</sup>

<sup>1</sup>Typically, when electoral board members have election questions, the normal process is for the electoral board to discuss the issue with the State Board of Elections. The State Board of Elections often will consult this Office for agency advice and clarification of Attorney General opinions regarding election laws. Such advice is then relayed to the appropriate electoral board. I mention this process should future inquires regarding the implementation of Virginia's election laws arise.

<sup>2</sup>Va. Code Ann. § 24.2-106.1 (LexisNexis Repl. Vol. 2003).

<sup>3</sup>Va. Const. art. II, § 8.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>1995 Va. Acts chs. 835, 848, at 1744, 1813, respectively.

<sup>7</sup>See 1978-1979 Op. Va. Att'y Gen. 97, 98.

<sup>8</sup>*Id.* ("[T]here is no prohibition on partisan political activity by members of local electoral boards, including serving as campaign chairman for a candidate."). Although the 1978 opinion uses the term "chairman" in its conclusion, the

question posed in the opinion was whether an electoral board member may serve as campaign manager for a candidate. I must conclude, therefore, that the terms "chairman" and "manager" mean the same in the context of responding to that specific inquiry.

<sup>9</sup>See 1995 Va. Acts, *supra* note 6, at 1745, 1814, respectively.

<sup>10</sup>See *Lee Gardens Arlington Ltd. P'ship v. Arlington County Bd.*, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995).

<sup>11</sup>*City of Richmond v. Sutherland*, 114 Va. 688, 693, 77 S.E. 470, 472 (1913).

<sup>12</sup>*Cape Henry Towers, Inc. v. Nat'l Gypsum Co.*, 229 Va. 596, 331 S.E.2d 476 (1985); *Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982).

<sup>13</sup>1978-1979 Op. Va. Att'y Gen. 97, *supra* note 7, at 98.

<sup>14</sup>Va. Const. art. II, § 8; § 24.2-115 (LexisNexis Repl. Vol. 2003).

<sup>15</sup>See *City of Portsmouth v. City of Chesapeake*, 205 Va. 259, 269, 136 S.E.2d 817, 825 (1964).

<sup>16</sup>Sections 24.2-106, 24.2-110 (LexisNexis Repl. Vol. 2003).

<sup>17</sup>I note, however, that such paid activity involving a candidate in another locality may conflict with the duties of a full-time registrar. See § 24.2-110 (providing that registrar, with consent of electoral board, "may undertake other duties which do not conflict with his duties as general registrar").

<sup>18</sup>See § 24.2-110 ("No general registrar shall serve as a ... volunteer worker in the campaign of a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of his jurisdiction.").

<sup>19</sup>See, e.g., § 24.2-114(2) (LexisNexis Repl. Vol. 2003) ("No registrar shall actively solicit, in a selective manner, any application for registration or for a ballot or offer anything of value for any such application.").

<sup>20</sup>Section 24.2-106.1.

<sup>21</sup>Opinion no. 03-031 to Keith J. Meredith, Secretary, Carroll County Electoral Board, dated June 13, 2003, is hereby withdrawn.

[Back to October 2003 Index](#)