Ms. Patricia W. Drain

Secretary, Fairfax County Electoral Board

February 5, 1996

You ask whether a voter who appears in person to vote by absentee ballot prior to election day may cast his ballot on voting equipment provided by the Fairfax County Electoral Board.

You state that the county recently has acquired new election equipment for use by absentee voters prior to election day and by election officers on election day in the county's central absentee voting precinct. You state that, in accordance with § 24.2626 of the Code of Virginia, the State Board of Elections (the "State Board") approved the electronic voting system. You indicate that the same system is used in other Virginia localities and in more than 300 jurisdictions in the United States. You describe in your letter the manner in which the system operates, and you include detailed drawings of the equipment.

You further state that on August 22, 1995, the State Board voted not to allow in-person absentee voters prior to election day to cast their absentee ballots on the electronic voting equipment. The State Board indicated to you that it made its ruling because of security concerns and because of its reliance on § 24.2712. You represent that this decision is contrary to the practice in Fairfax County and other jurisdictions in Virginia. You believe, moreover, that the State Board's ruling is inconsistent with the last paragraph of § 24.2707.

Section 24.2707 contains the following procedures by which a voter casts an absentee ballot: (1) a voter who applies for an absentee ballot by mail or in person before the printed ballots are available receives his ballot by mail, and returns his marked ballot by mail or delivers it personally to the electoral board or the general registrar; and (2) a voter who applies for an absentee ballot in person at a time when the printed ballots are available casts his ballot at the time of application in the office of the general registrar or the secretary of the electoral board. Section 24.2707 contains detailed requirements for marking the ballot,
sealing the envelope, refolding the ballot, and signing the statement printed on the envelope in the presence of a witness. The last paragraph of § 24.2707 provides:

The electoral board of any county or city using a central absentee voting precinct may provide for the casting of absentee ballots on voting equipment by applicants who are voting in person. The State Board shall prescribe procedures for the use of voting equipment.

In addition to applicants who cast absentee ballots in accordance with § 24.2707, other applicants receive absentee ballots and later determine to vote in person. The procedure for the in-person voting by those applicants varies, depending on whether the locality has a central absentee voting precinct established in accordance with § 24.2712.

In a locality without a central absentee voting precinct, § 24.2708 controls in-person voting by an applicant who received an absentee ballot. Section 24.2708 provides that, after returning the unopened ballot either on or before the day of the election, the applicant votes on election day at his precinct in the normal manner.

In a locality with a central absentee voting precinct, § 24.2712(C) controls the in-person voting of unmarked absentee ballots. The first paragraph of § 24.2712(C) provides:

If any voter brings an unmarked ballot to the central absentee voter precinct on the day of the election, he shall be allowed to vote it. If any voter brings an unmarked ballot to the electoral board on or before the day of the election, he shall be allowed to vote it, and his ballot shall be delivered to the absentee voter precinct before the closing of the polls.

Section 24.2712 itself contains no language authorizing the casting of an absentee ballot on voting equipment at a central absentee voting precinct. It is by operation of the last paragraph of § 24.2707 that a person may vote by absentee ballot on voting equipment on election day.

Your position, however, is that § 24.2707 operates not only in conjunction with § 24.2712 to allow such in-person voting on voting equipment on election day at a central absentee voting precinct, but also to allow absentee voting on voting equipment before election day by voters who apply for absentee ballots in person at a time when the printed ballots are available.

It is my opinion that § 24.2707 does not mandate this conclusion. The State Board may well view this conclusion as inconsistent with the directions in § 24.2707 for the marking and casting of absentee ballots and may view the language in § 24.2707 as operating only to permit in-person voting on electronic voting
equipment in the situation described in the first sentence of § 24.2712(C).

It is clear that the last paragraph of § 24.2707 does not grant all counties and cities with central absentee voting precincts an absolute right to permit absentee voting on voting equipment prior to election day. Rather, the final sentence of § 24.2707 expressly authorizes the State Board to "prescribe procedures for the use of voting equipment" in a locality "using a central absentee voting precinct." Had the General Assembly not intended to grant the State Board the authority to limit the use of voting equipment in localities with central absentee voting precincts, the final sentence of § 24.2707 would be a nullity, a result traditionally disfavored in applying principles of statutory construction.\(^4\)

The language of § 24.2707 reaffirms the general statutory duty of the State Board to establish rules and regulations for assuring that the voting system operates in each locality so as "to obtain uniformity" and "legality and purity in all elections."\(^5\) I assume that, in making its decision, the State Board had access to all information regarding the operation of Fairfax County’s electronic voting system that you provided in your opinion request, and considered the detailed procedure in Title 24.2 for casting and counting absentee ballots.\(^6\) As in other instances, the decision of the State Board in performing its statutory duty in this instance is entitled to great weight.\(^7\) I conclude that the decision in this instance is not inconsistent with the express language of either § 24.2707 or § 24.2712, and represents a proper exercise of the authority the General Assembly placed in the State Board.

\(^1\)In conformity with the language of the statutes cited in this opinion, I use the term "central absentee voting precinct" rather than "central absentee voting district."

\(^2\)Section 24.2712(A) authorizes the governing body of each county or city to "establish one or more central absentee voter precincts in the courthouse or other public buildings for the purpose of receiving, counting, and recording absentee ballots cast in the county or city." Section 24.2712(B) requires each central absentee voter precinct, like other precincts, to have "at least three officers of election."

\(^3\)I do not interpret your position to be also that § 24.2707 would allow a voter who receives an absentee ballot by mail to bring the unmarked ballot to the electoral board before the day of the election, return the ballot, and at that time vote in person on the voting equipment.

\(^4\)See Gallagher v. Commonwealth, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.06 (5th ed. 1992 &

Section 24.2103.

See Tit. 24.2, Ch. 7, §§ 24.2700 to 24.2713.

See Forst v. Rockingham, 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981); Dept. Taxation v. Prog. Com. Club, 215 Va. 732, 739, 213 S.E.2d 759, 763 (1975); 1993 Op. Va. Att'y Gen. 226, 227. This rule of statutory construction is particularly persuasive in construing individual statutes that constitute parts of a complex statutory scheme, such as the voting system established in Title 24.2. In such an instance, deference to a decision of the agency charged by the General Assembly with the statewide administration of such a system is appropriate unless the decision clearly is wrong. I, therefore, issue no opinion on whether the language of § 24.2707 or § 24.2712 could support a different conclusion by the State Board.