



# COMMONWEALTH OF VIRGINIA

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October 16, 2009

The Honorable David A. Nutter  
Member, House of Delegates  
P.O. Box 1344  
Christiansburg, Virginia 24068

Dear Delegate Nutter:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask, under Virginia law, what process is required to move a polling place based on an emergency.<sup>1</sup>

## Response

It is my opinion that the Virginia law governing the process required to move a polling place based on an emergency is found in § 24.2-310(D). The General Assembly requires that: (i) there be an emergency that makes a polling place unusable or inaccessible; (ii) the local electoral board select an alternative polling place; (iii) the local electoral board obtain the approval of the State Board of Elections for both the declaration of emergency and the alternative polling place; and (iv) if the State Board of Election approves the emergency and the alternative polling place, the local electoral board must give notice to the voters of the change in polling place that is appropriate to the circumstances of the emergency.

## Applicable Law and Discussion

Generally, a local governing board is statutorily authorized to alter the boundaries of voting precincts or polling places at any time other than within sixty days before any general election.<sup>2</sup> However, in § 24.2-310(D), the General Assembly provides an exception to the sixty-day prohibition<sup>3</sup> against changes in local polling places before a general election:

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<sup>1</sup> I have not addressed any federal requirements that may be related to changes of polling places. Virginia is subject to the federal Voting Rights Act of 1965, which requires changes in practice or procedure related to elections to be submitted to the Department of Justice for review and evaluation. *See generally* 2005 Op. Va. Att’y Gen. 97.

<sup>2</sup> *See* 2006 Op. Va. Att’y Gen. 119 (interpreting §§ 24.2-305(A), 24.2-306(A), and 24.2-307 related to voting precincts). I note that § 24.2-306(A) also applies to changes in polling places. It is my opinion that the analysis applicable to changes in voting precincts equally applies to changes in polling places.

<sup>3</sup> *See* VA. CODE ANN. § 24.2-306(A) (2006) (prohibiting changes in local voting precincts “within 60 days next preceding any general election”).

If an emergency makes a polling place unusable or inaccessible, the electoral board shall provide an alternative polling place and give notice of the change in polling place, subject to the prior approval of the State Board. The electoral board shall provide notice to the voters appropriate to the circumstances of the emergency.

The General Assembly does not define the terms “emergency,” “unusable,” and “inaccessible” as used in § 24.2-310(D) or in Title 24.2. When a term is not defined by the General Assembly, it must be given its ordinary meaning.<sup>4</sup> The term emergency means “an unforeseen combination of circumstances or the resulting state that calls for immediate action.”<sup>5</sup> The term unusable means “not serviceable: USELESS,”<sup>6</sup> and the term inaccessible means “not accessible ... not capable of being reached.”<sup>7</sup>

When a statute is expressed in plain and unambiguous terms, whether general or limited, it is assumed that the General Assembly means what it plainly has expressed, and no room is left for construction.<sup>8</sup> Consequently, when an unforeseen combination of circumstances makes a polling place useless or not accessible, the General Assembly requires the local electoral board to provide an alternative polling place “subject to the prior approval of the State Board.”<sup>9</sup>

Should the State Board approve of both the emergency declared by and the alternative polling place selected by the local electoral board, the General Assembly requires that the local board “give notice of the change in polling place,” which must be “appropriate to the circumstances of the emergency.”<sup>10</sup>

It is well-established that statutes are not to be read in isolation.<sup>11</sup> Furthermore, statutes relating to the same subject should be considered *in pari materia*.<sup>12</sup> Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.<sup>13</sup> The use of an alternative polling place arises from an emergency declared by the local electoral board that is approved by the State Board.<sup>14</sup> Therefore, such polling place would be

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<sup>4</sup> See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

<sup>5</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 741 (1993).

<sup>6</sup> *Id.* at 2514.

<sup>7</sup> *Id.* at 1139.

<sup>8</sup> *South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

<sup>9</sup> Section 24.2-310(D) (Supp. 2009). For purposes of Title 24.2, “State Board” means the State Board of Elections. See § 24.2-101 (Supp. 2009).

<sup>10</sup> Section 24.2-310(D).

<sup>11</sup> 2B NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 51:2 (West 7th ed. 2008); Op. Va. Att’y Gen.: 1999 at 22, 22; 1998 at 123, 124; *id.* at 19, 21; 1996 at 197, 198; 1995 at 146, 147; 1993 at 160, 162; *id.* at 135, 137; 1992 at 108, 112.

<sup>12</sup> See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 Op. Va. Att’y Gen. 134, 135. “*In pari materia*” is the Latin phrase meaning “[o]n the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 862 (9th ed. 2009).

<sup>13</sup> See 2A SINGER & SINGER, *supra* note 11, at § 46:5 (West 7th ed. 2007); 2000 Op. Va. Att’y Gen. 182, 185.

<sup>14</sup> See § 24.2-310(D).

used only for the duration of time that the original polling place is unusable or inaccessible. The local electoral board is the entity that selects the alternative polling place and gives notice to the voters<sup>15</sup> rather than the board of supervisors or city council, which are otherwise required by the General Assembly to establish by ordinance all voting precincts that are required within the county or city.<sup>16</sup> While Attorneys General consistently have declined to render official opinions on specific factual matters,<sup>17</sup> the statutory language regarding “emergency” for purposes of § 24.2-310(D) implies that an event would be rare and unforeseen.<sup>18</sup>

### Conclusion

Accordingly, it is my opinion that the Virginia law governing the process required to move a polling place based on an emergency is found in § 24.2-310(D). The General Assembly requires that: (i) there be an emergency that makes a polling place unusable or inaccessible; (ii) the local electoral board select an alternative polling place; (iii) the local electoral board obtain the approval of the State Board of Elections for both the declaration of emergency and the alternative polling place; and (iv) if the State Board of Election approves the emergency and the alternative polling place, the local electoral board must give notice to the voters of the change in polling place that is appropriate to the circumstances of the emergency.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Mims', with a stylized flourish at the end.

William C. Mims

1:213; 1:941/09-081

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<sup>15</sup> *Id.*

<sup>16</sup> See § 24.2-307 (2006).

<sup>17</sup> See, e.g., 2002 Op. Va. Att’y Gen. 321, 325 and opinions cited therein.

<sup>18</sup> See *supra* notes 5-7 and accompanying text. You describe a situation where the potential problem with the original polling place was identified as early as November 2008. The fact that a local electoral board has waited until the present time to address the issue with such polling place is troubling because it has the effect of avoiding the application of § 24.2-306(A), which prohibits the enactment of a change in a local polling place “within 60 days next preceding any general election.”