



COMMONWEALTH of VIRGINIA

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June 16, 2008

Mr. G. William Thomas, Jr.
Chairman, Electoral Board for the City of Richmond
P.O. Box 61037
Richmond, Virginia 23261-1037

Dear Mr. Thomas:

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

Issue Presented

You ask whether § 24.2-626 permits local electoral boards to borrow or lease direct recording electronic machines for use in elections either on a temporary or permanent basis. You also ask whether § 24.2-626 prohibits local boards from purchasing, borrowing, or leasing direct recording electronic machines that will not be used for voting, but would only be used at the polling place on election day to demonstrate to voters how to operate the equipment pursuant to § 24.2-647.

Response

It is my opinion that that § 24.2-626 prohibits local electoral boards from borrowing or leasing direct recording electronic machines. It further is my opinion that § 24.2-626 prohibits local boards from purchasing, borrowing, or leasing direct recording electronic machines for use at polling places on election day to demonstrate to voters how to operate the equipment pursuant to § 24.2-647.

Applicable Law and Discussion

Chapter 6 of Title 24.2, §§ 24.2-600 through 24.2-687, governs elections in Virginia. Article 3 of Chapter 6, §§ 24.2-625 through 24.2-642, governs voting equipment and systems related to elections. Section 24.2-626 provides that:

The governing body of each county and city shall provide for the use of electronic voting or counting systems, of a kind approved by the State Board [of Elections], at every precinct and for all elections held in the county, the city, or any part of the county or city.

Each county and city governing body shall purchase, lease, lease purchase, or otherwise acquire such systems and may provide for the payment therefor in the manner it deems proper. Systems of different kinds may be adopted for use and be used in different precincts of the same county or city, or within a precinct or precincts in a county or city, subject to the approval of the State Board.

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On and after July 1, 2007, no county or city shall acquire any direct recording electronic machine (DRE) for use in elections in the county or city. DREs acquired prior to July 1, 2007, may be used in elections in the county or city for the remainder of their useful life.

When the language is plain and unambiguous, general rules of statutory construction require that the plain meaning of the language be applied.¹ Thus, when the General Assembly has used words of a plain and definite import, the rules of construction forbid assigning those words a construction that would amount to concluding that the General Assembly meant something other than that which it actually expressed.² Section 24.2-626 does not define the term “acquire.”³ In the absence of a statutory definition, it is assumed that the General Assembly has intended the common, ordinary meaning of a word to apply. The term “acquire” means “[t]o gain possession or control of; to get or obtain.”⁴

You first inquire whether § 24.2-626 prohibits borrowing or leasing direct recording electronic machines by local electoral boards. The term “borrow” commonly means “[t]o take something for temporary use,”⁵ and the term “lease” commonly means “[t]o grant the possession and use of (land, buildings, rooms, moveable property, etc.) to another in return for rent or other consideration.”⁶ Both of these terms contemplate in their meaning the possession or control of an object or property. The General Assembly’s use of the term “acquire” in the prohibition language of § 24.2-626⁷ clearly is intended to have broad application. Therefore, since local electoral boards are prohibited from acquiring possession of any type of direct recording electronic machines after July 1, 2007, I must conclude that § 24.2-626 plainly and unambiguously prohibits local electoral boards from borrowing or leasing such machines.

¹Vaughn, Inc. v. Beck, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001); Shelor Motor Co. v. Miller, 261 Va. 473, 479, 544 S.E.2d 345, 348 (2001). The Commonwealth follows the “plain meaning” rule of statutory construction. See Berry v. Klinger, 225 Va. 201, 208, 300 S.E.2d 792, 796 (1983). Therefore, the plain and natural meaning of the words used in the statute is considered to determine the General Assembly’s intent. See Britt Constr., Inc. v. Magazzino Clean, LLC, 271 Va. 58, 62, 623 S.E.2d 886, 888 (2006); W. Lewinsville Heights Citizens Ass’n v. Bd. of Supvrs., 270 Va. 259, 265, 618 S.E.2d 311, 314 (2005); Mozley v. Prestwold Bd. of Dirs, 264 Va. 549, 554, 570 S.E.2d 817, 820 (2002).

²Britt Construction, 271 Va. at 62-63, 623 S.E.2d at 888; Alliance to Save the Mattaponi v. Commonwealth, 270 Va. 423, 439, 621 S.E.2d 78, 87 (2005); Williams v. Commonwealth, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003).

³I note that you refer to a decision of the Supreme Court of Virginia that provided discussion regarding the difference between leasing and owning property. See Shaia v. City of Richmond, 207 Va. 885, 153 S.E.2d 257 (1967). In my opinion the decision in *Shaia* is not applicable to the situation you present. *Shaia* involved the valuation of a leasehold interest for purposes of taxation of real property. *Id.* Therefore, *Shaia* does not provide significant analysis regarding interpretation of the term “acquire” as used in § 24.2-626.

⁴BLACK’S LAW DICTIONARY 25 (8th ed. 2004). In common usage, “acquire” means “[t]o come into possession or control of often by unspecified means,” “to come to have as a new or added characteristic, attribute, trait, or ability (as by sustained effort or natural selection).” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 10 (2001 10th ed.).

⁵BLACK’S LAW DICTIONARY, *supra* note 4, at 196.

⁶*Id.* at 909.

⁷“On and after July 1, 2007, no county or city shall acquire any direct recording electronic machine (DRE) for use in elections in the county or city.” VA. CODE ANN. § 24.2-626 (Supp. 2007).

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You also ask whether § 24.2-626 prohibits local electoral boards from purchasing, borrowing, or leasing direct recording electronic machines to be used only at polling places on election day to demonstrate to voters how to operate the equipment pursuant to § 24.2-647. You indicate that such machines would not be used for voting.

Section 24.2-647 directs local electoral boards to provide instruction to voters at each polling place on election day regarding “the proper manner of voting.” Further, § 24.2-647 prescribes that “a model of, or materials displaying, a portion of its ballot face” be accessible to the voters. In § 24.2-647, the General Assembly does not describe the types of voting machines to be used at polling places and does not specifically address the use of direct recording electronic machines. Section 24.2-647 is general in nature. “[W]hen one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they conflict, the latter prevails.”⁸

Section 24.2-626 specifically prohibits local electoral boards from acquiring direct recording electronic machines, while § 24.2-647 generally requires boards to instruct voters on the proper manner of voting within a polling place. To the extent that the specific provisions of § 24.2-626 appear to conflict with the general provisions of § 24.2-647, § 24.2-626 prevails.⁹ Thus, § 24.2-626 prohibits local electoral boards from purchasing, borrowing, or leasing direct recording electronic machines after July 1, 2007, whether they are used for purposes of voting or to demonstrate the proper manner of voting.¹⁰

Conclusion

Accordingly, it is my opinion that § 24.2-626 prohibits local electoral boards from borrowing or leasing direct recording electronic machines. It further is my opinion that § 24.2-626 prohibits local boards from purchasing, borrowing, or leasing direct recording electronic machines for use at polling places on election day to demonstrate to voters how to operate the equipment pursuant to § 24.2-647.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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⁸Thomas v. Commonwealth, 244 Va. 1, 22-23, 419 S.E.2d 606, 618 (1992) (quoting Va. Nat’l Bank v. Harris, 220 Va. 336, 340, 257 S.E. 2d 867, 870 (1979)); see also Peerless Ins. Co. v. County of Fairfax, 274 Va. 236, 244, 645 S.E.2d 478, 483 (2007); *Mattaponi*, 270 Va. at 439-40, 621 S.E.2d at 87; *Capelle v. Orange County*, 269 Va. 60, 65, 607 S.E.2d 103, 105 (2005) (noting that specific statute prevails over general statute if statutes cannot be harmonized).

⁹See *id.*

¹⁰I note that it would not be necessary to use an actual direct recording machine to demonstrate the proper manner in which to vote. For example, a local electoral board could provide illustrations depicting the proper use of such machines, including the manner in which to vote.