



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

Funding Advisory Opinion FAO-08-009

Date Issued:

September 26, 2008

Requestor:

Sacramento County, California (AOR-08-009)

Question:

May Help America Vote Act (HAVA) Section 251 funds be used for the purchase, installation, and upkeep of electronic roster book equipment (electronic poll books), as part of meeting the Title III requirements and not just as an improvement to the administration of Federal elections?

Answer:

There are two possible ways for the purchase, installation, and upkeep of electronic poll books to be funded with HAVA Section 251 funds as part of meeting the Title III requirements and not just as an improvement to the administration of Federal elections. However, the office of the chief State election official is ultimately responsible for determining how the State plans to meet the requirements of Title III and whether counties and other subrecipients can expend HAVA funds on certain activities.

Discussion:

If the poll books are an integral part of a voting system, its costs may be funded with Section 251 funds as part of meeting the Title III requirements. To be an integral part of a voting system, according to Section 301(b) of HAVA, it must be part of the “total combination of mechanical, electromechanical, or electronic equipment (including software, firmware, and documentation required to program, control, and support the equipment) that is used . . .” For instance, a State may use electronic poll books to activate voter cards at the polling place on Election Day.

In addition, States may use electronic poll books as part of implementing the requirements of Section 303 for a statewide voter registration list. For instance, the electronic poll books could be used to upload voter history to the statewide voter registration list after an election. This information could be used as part of carrying out the State’s list maintenance requirements.

Although Sacramento County believes their implementation of electronic poll books would be part of meeting the Title III requirements, the State has indicated otherwise in previous conversations with the EAC. The State of California has previously determined that it does not consider the electronic poll books part of the voting system because local jurisdictions are



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specifically prohibited from using them to activate voter access cards or directly interface with voting equipment. In addition, the State determined that electronic poll books are not part of the State's strategy for implementing the requirements of Section 303.

Based on these prior determinations, the State believed it was inappropriate for counties to use HAVA funding for purchasing electronic poll books unless it was as an improvement to the administration of Federal elections, in which case they could use a percentage of the State's minimum funding amount under HAVA Section 251(b)(2)(B). It is within the State's discretion to make this determination and prohibit counties and other subrecipients to utilize HAVA funding for the purchase of electronic poll books, even if the expense is generally allowable using Section 251 funds.