



U.S. ELECTION ASSISTANCE COMMISSION
1201 New York Ave. NW – Suite 300
Washington, DC 20005

**U.S. Election Assistance Commission (EAC)
Funding Advisory Opinion
FA0-10-002**

Date Issued: May 5, 2010

Requestor: Tennessee Secretary of State (AOR-10-002)

Question: May Tennessee use Help America Vote Act (HAVA) Section 251 funds to purchase paper ballots for federal elections?

Answer: EAC finds that Tennessee may not use Section 251 funds to purchase paper ballots for federal elections since this expenditure would not meet any of the requirements of Title III of HAVA.

Discussion: Per Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, EAC considers three factors when determining whether or not to pre-approve a request by a grantee to use federal funds. The request must be (1) allowable; (2) allocable; and (3) reasonable. Here, the Secretary of State of Tennessee is asking EAC to determine whether this expenditure is an allowable cost.

States may use Section 251 funds in three instances. First, states may use Section 251 funds to comply with the requirements in Title III of HAVA. After a state certifies compliance with the Title III requirements, a state may also use Section 251 funds “to carry out other activities to improve the administration of elections for Federal office...” Finally, a state may use its minimum payment amount applicable to a state under Section 252(c) 42 U.S.C. § 15401(b)(2) for the improvement of the administration of federal elections.

To answer Tennessee’s question, the Commissioners must first determine whether the purchase of paper ballots for federal elections would fulfill any of the requirements of Title III. The purpose of the requirements of Title III is to institute uniform and nondiscriminatory election technology and administration requirements for voting systems used in federal elections. In this case, the purchase of paper ballots for federal elections does not satisfy any of the Title III requirements and thus EAC finds that the purchase of paper ballots for federal elections is not an allowable cost under Section 251(b)(1).¹

Next, since Tennessee has not certified that it is compliant with the requirements of Title III of HAVA, EAC must determine whether the purchase of paper ballots can be paid for using the minimum payment that permits federal financial assistance to be used for “other activities to improve the administration of elections for Federal office” 42 U.S.C. § 15401(b)(2). Under this analysis, the purchase of the paper ballots would need to be considered an improvement. The

¹ This advisory opinion should not be read to preclude the possibility of using Section 251 funds to purchase provisional ballots under Section 302 of HAVA.



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purchase of the paper ballots are currently funded by the counties and were funded and provided for by the counties prior to the passage of HAVA and, thus, cannot be viewed as an improvement to the election process. Therefore, Tennessee may not use Section 251 funds to purchase paper ballots.