



U.S. ELECTION ASSISTANCE COMMISSION
 1225 NEW YORK AVENUE, N.W., SUITE 1100
 WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of)
)
 Advisory Opinion in Response to a Request From The)
 Virgin Islands To Use Help America Vote Act)
 (HAVA) Section 251 Funds To Outfit Space In A)
 Different Building To House The Office Of The)
 Supervisor Of Elections)

CERTIFICATION

I, Donetta Davidson, Chair of the Election Assistance Commission, do hereby certify that on February 25, 2010 the Commission decided by a vote of 3-0. The following action(s) were taken:

1.

The Commission should approve the Advisory Opinion in Response to a Request From The Virgin Islands To Use Help America Vote Act (HAVA) Section 251 Funds To Outfit Space In A Different Building To House The Office Of The Supervisor Of Elections.

Commissioners Beach, Davidson, and Hillman approved the recommendation.

Attest:

2/26/10
 Date

Donetta Davidson

 Donetta Davidson
 Chair

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Please affix her electronic signature per authorization below. Thank you, MAB

Mary Anne Bradfield
Special Assistant
U.S. Election Assistance Commissioner Donetta Davidson
1225 New York Ave., Suite 1100
Washington, D.C. 20005
Phone: (202) 566-3100

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--- Forwarded by Mary Anne Bradfield/EAC/GOV on 02/26/2010 03:37 PM ---

Donetta L. Davidson/EAC/GOV

To Mary Anne Bradfield/EAC/GOV@EAC

cc "Shirley Hines" <shineseac@gmail.com>, "Tom Wilkey" <twilkey@eac.gov>, "Alice Miller" <amr

02/26/2010 11:04 AM

Subject Re: Two Tally Votes ready for certification Link

This email is to give Mary Anne the authority to sign my name on the two Certifications. The one on Virgin Islands and the one on Wyoming Audit.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Mary Anne Bradfield
Sent: 02/26/2010 10:39 AM EST
To: Donetta Davidson
Cc: shineseac@gmail.com
Subject: Two Tally Votes ready for certification

Madam Chair,

Certifications are ready for the two Tally Votes listed below. I will need your authorization to sign for you. Today is the final day to certify them. Thank you

- 1) Approving the Advisory Opinion in Response to a Request From the U.S. Virgin Islands.
2) Approving the Resolution of Wyoming audit Appeal.

Mary Anne Bradfield
Special Assistant
U.S. Election Assistance Commissioner Donetta Davidson
1225 New York Ave., Suite 1100
Washington, D.C. 20005
Phone: (202) 566-3100

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

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: February 23, 2010, 5:00p.m.

BALLOT DEADLINE: February 25, 2010, 5:00p.m.

COMMISSIONERS: BEACH, DAVIDSON, AND HILLMAN

SUBJECT: ADVISORY OPINION IN RESPONSE TO A REQUEST FROM THE VIRGIN ISLANDS TO USE HELP AMERICA VOTE ACT (HAVA) SECTION 251 FUNDS TO OUTFIT SPACE IN A DIFFERENT BUILDING TO HOUSE THE OFFICE OF THE SUPERVISOR OF ELECTIONS

- () I approve the recommendation.
- () I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: _____

DATE: _____ **SIGNATURE:** _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.


FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



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

MEMORANDUM

TO: Commissioners Beach, Hillman, and Davidson

FROM:  Thomas R. Wilkey, Executive Director

DATE: February 23, 2010

SUBJECT: Advisory Opinion in Response to a Request from the Virgin Islands to use Help America Vote Act (HAVA) Section 251 Funds to Outfit Space in a Different Building to House the Office of the Supervisor of Elections.

Funding Advisory Opinion No. FAO-09-014

In accordance with established policy of the U.S. Election Assistance Commission, FAO-09-014 approves the request from the Virgin Islands to spend HAVA section 251 funds to build-out space in a different building to house the Office of the Supervisor of Elections.

No comments were received from the public, the Commissioners, or Commissioner Staff on the public posting of this request.

Recommendation

The Commissioners should approve the attached advisory opinion.

Attachment



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

**U.S. Election Assistance Commission (EAC)
Funding Advisory Opinion
FA0-09-014**

Date Issued:

Requestor: Virgin Islands (AOR-09-009)

Question: May section 251 funds be used to build-out space to house the new Office of the Supervisor of Elections for the U.S. Virgin Islands?

Answer: HAVA section 251 funds may be used to build-out space to house the new Office of the Supervisor of Elections for the U.S. Virgin Islands.

Discussion:

The Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, requires EAC to consider three factors when determining whether or not to approve a request by a grantee to use Federal funds to finance capital improvements¹. The cost must be (1) allowable; (2) allocable; and (3) reasonable. Here, the Virgin Islands seek to use up to \$260,000 of section 251 funds to renovate a building to house the Office of the Supervisor of Elections. The renovation of the new space will be fully compliant with the Americans with Disabilities Act (ADA) and include office spaces, restrooms, a kitchen, a training room, a conference room, a storage room for voting machines, and the installation of a Vertical Reciprocating Platform (VRP). The VRP will allow voting machines to be efficiently transported in and out of storage.

A cost is allowable if it meets the criteria for authorized expenditures specified in the applicable statute and cost principles. Section 251(b)(2) allows States to use section 251² funds “to carry out other activities to improve the administration of elections for Federal office...” EAC previously held that the use of section 251 funds for purposes permitted under section 101(b) constitutes an improvement to the administration of Federal elections.³ In addition, the EAC previously found the renovation of an existing office space to create a facility that will be used to secure, count and store election ballots as well as serve as an accessible voter registration center to be an allowable expense.⁴ The newly renovated building will be used to administer elections, train poll workers, store voting equipment, and serve as an accessible voter registration center. All of these

¹ A capital improvement is an improvement to any structure or component erected as a permanent fixture on real property that adds to its value and useful life. See page 9 of *Frequently Asked Questions Regarding Appropriate Uses of HAVA Funds* (Rev. Oct. '06), which can be found at www.eac.gov/election/hava-reporting.

² Virgin Islands must first file the appropriate certification with the EAC, pursuant to Section 251(b)(2) of HAVA.

³ See for example FAO-08-008; FAO-08-009; FAO-08-011; FAO-08-012.

⁴ FAO-09-009



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renovations will improve Virgin Islands' ability to administer Federal elections. Therefore, EAC finds that the renovation of a building to house the Office of the Supervisor of Elections is an allowable expense.

A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received. OMB Circular A-87 Attachment A, Section C(3). The benefits received from renovation of the different building to house the Office of the Supervisor of Elections must be directly related to the purpose of the expenditure to be fully allocated to HAVA funding. The Virgin Islands stated that the newly renovated Office of the Supervisor of Elections will be used exclusively to administer elections, train poll workers, store voting equipment, and serve as an accessible voter registration center. Therefore the estimated cost of the renovation is fully allocable to section 251 funds.

A cost is reasonable if "...in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost". OMB Circular A-87 Attachment A Section C(2). In making a reasonableness determination, the awarding agency must consider whether the cost is one typically necessary for performance under the Federal award and whether the entity approving the expenditure acted prudently in the circumstances. If the renovations further the goals of the statute and a prudent person would make the same decisions, then the cost is likely reasonable.

EAC concludes that the use of section 251 funds to renovate a building that will be used to administer elections, train poll workers, store voting equipment, and serve as an accessible voter registration center is an allowable, allocable, and reasonable expense.

One additional factor that must be included in this discussion is the fact that the Virgin Islands is that the U.S. Department of Justice has found that the current election office does not comply with the Americans with Disabilities Act. Virgin Islands acknowledged this fact in their advisory opinion request. Section 253 of the Help America Vote Act (HAVA) requires that states fulfill specific conditions to be eligible for Section 251 funds. One of the conditions that must be met is a certification that the state is in compliance with a number of statutes noted in section 906 of HAVA, including, but not limited to, the ADA⁵. The Virgin Islands certified to all of the required elements in Section 253 of HAVA, including certification of compliance with the section 906 laws On June 24, 2004. According to the U.S. Attorney for the Virgin Islands, DOJ made a finding of noncompliance with the ADA in September of 2008. The Virgin Island Election Director has confirmed that the certification in 2004 was prior to any conversations with the justice Department about potential ADA violations and that Virgin Islands had no actual or constructive knowledge of the noncompliance when it made its certification to receive requirements payments. As such, the use of 251 funds to make needed renovations to the building should be approved.

⁵ Along with the Americans with Disabilities Act of 1990, Section 906 also lists the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act and the Rehabilitation Act of 1973



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BALLOT DEADLINE: February 25, 2010, 5:00p.m.

COMMISSIONERS: BEACH, DAVIDSON, AND HILLMAN

SUBJECT: ADVISORY OPINION IN RESPONSE TO A REQUEST FROM THE VIRGIN ISLANDS TO USE HELP AMERICA VOTE ACT (HAVA) SECTION 251 FUNDS TO OUTFIT SPACE IN A DIFFERENT BUILDING TO HOUSE THE OFFICE OF THE SUPERVISOR OF ELECTIONS

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: _____

DATE: 02/25/10 SIGNATURE: [Signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



U.S. ELECTION ASSISTANCE COMMISSION
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Washington, DC 20005

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- I approve the recommendation.
 I disapprove the recommendation.
 I object to the recommendation.
 I am recused from voting.

COMMENTS: _____

DATE: 2-23-2010 SIGNATURE: Donetta Davidson

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



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- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: _____

DATE: 2/24/10

SIGNATURE: [Handwritten Signature]

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FROM THOMAS WILKEY, EXECUTIVE DIRECTOR