



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

**U.S. Election Assistance Commission (EAC)
Funding Advisory Opinion
FA0-10-003**

Date Issued: May 5, 2010

Requestor: New York State Board of Elections (AOR-10-003)

Question: May Tioga County, New York (County) use Help America Vote Act (HAVA) Section 251 funds to purchase a van for use in voter education and inspector training of optical scan voting systems and accessible ballot marking devices?

Answer: EAC finds that the County may use HAVA Section 251 funds¹ to purchase a van for use in voter education and inspector training of optical scan voting systems and accessible ballot marking devices, although the State of New York, as the direct recipient of EAC funds, has final discretion to either allow or not allow the purchase of the van.

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 to approve a request by a grantee to use federal funds to purchase equipment costing \$5,000 or more. The cost must be (1) allowable; (2) allocable; and (3) reasonable. Here, the New York State Board of Elections submitted a County's request for pre-approval of the purchase of a motor vehicle² (\$35,000) for use in voter education and inspector training of optical scan voting systems and accessible ballot marking devices.

Previous policy established by EAC through FAO-09-004 and FAO-09-005 found that the use of Section 251 funds to purchase motor vehicles for use in voter education, voting system demonstrations, training, and transportation of voting equipment are allowable costs.³ EAC also determined that the expense was allocable and reasonable if the benefit received is directly related to the purpose of the expenditure,⁴ and the cost of the motor vehicle does not exceed the amount which would be incurred by a prudent person under similar circumstances.⁵ Therefore,

¹ New York must file the appropriate certification with the EAC, pursuant to Section 251(b)(2) of HAVA, to be eligible to use Section 251 funds for "other activities to improve the administration of elections for Federal office" (42 U.S.C. § 15401(b)(2)).

² All state and local entities that use HAVA funding to acquire vehicles must adhere to the Common Rule (41 CFR § 105-71.132, §105-71.136), which describes how states and local jurisdictions must procure property and services, and use, manage, and dispose of equipment acquired under a federal grant in accordance with state laws and procedures.

³ See <http://www.eac.gov/election/advisories%20and%20guidance>.

⁴ OMB Circular A-87 Attachment C, Subsection 3(a).

⁵ New York must appropriately allocate the cost of the motor vehicle in accordance with OMB Circular A-87 Attachment A, Section C(3).

From the Office of the Executive Director



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

in accordance with previously established policy, EAC approves the County's request to purchase a van for use in voter education and voting system inspector training. Despite EAC's approval of this request (through the advisory opinion process), final authority for Tioga County to make the purchase rests with the state. As a direct recipient of HAVA funds, the state has the discretion to limit the amount of funds a local jurisdiction spends on items allowable under HAVA.

From the Office of the Executive Director