STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-085

August 1, 2014

The Honorable Charlotte Vining Douglas
State Representative
5315 Ridge Road
Alma, Arkansas 72921-8254

The Honorable Bryan King
State Senator
871 CR 814
Green Forest, Arkansas 72638

Dear Representative Douglas and Senator King:

You requested my opinion on questions about the February 2014 adoption – on a split rather than unanimous vote – by the Sebastian County Board of Election Commissioners of a motion to close certain precincts' polling sites and provide that such precincts' voters would thenceforth vote in places that already served as polling sites for other precincts.

I enclose a copy of an opinion on this matter I recently issued to Prosecuting Attorney Daniel Shue.[1] I believe the opinion adequately addresses the legal issues your request raises.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

Enclosure

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[1] Op. Att'y Gen. 2014-068.

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STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-068

July 25, 2014

The Honorable Daniel Shue
Prosecuting Attorney
Twelfth Judicial District
901 South B Street, Suite 209
Fort Smith, Arkansas 72901

Dear Mr. Shue:

This is my opinion on your question whether the Sebastian County Board of Election Commissioners (the "SCBEC") followed the law – with respect to both the May 2014 primary and future elections – when it closed and consolidated some polling sites by majority but not unanimous vote.

At its February 2014 meeting, the three-member[1] SCBEC considered a motion "to close some polling sites and consolidate precincts with polling sites in close proximity to one another." Two members voted for the motion, and one voted against. The motion was deemed passed and was implemented for the May primary.[2]

With an exception not relevant here, "designation of polling sites shall be by a unanimous vote of the members . . . present."[3]

Another part of the same code section addresses "changes" in polling sites.[4]

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[1] *See* A.C.A. § 7-4-102(a)(2) (Repl. 2011).

[2] It is not clear whether the motion established any completely new polling sites or only added precincts to polling sites already being used by other precincts. My opinion is the same in either case.

[3] A.C.A. § 7-5-101(a)(2) (Supp. 2013).

[4] The "changes" provisions are:

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It is submitted that the motion made "changes" rather than "designations" and that a majority vote was sufficient because the "changes" provisions do not state that unanimity is required.[5]

RESPONSE

In my opinion, the motion included "designations," required unanimity, so was not lawfully adopted. Any alteration in a precinct's preexisting polling site involves, in my view, the "designation" of a new site for that precinct, and the unanimity rule therefore applies.

Admittedly such an alteration also amounts to a "change" in the precinct's polling site. But the "changes" part of the statute does not say – or in my view imply -- that the changes it describes may be made by majority vote. It merely (i) requires that preexisting polling sites be used unless the county board orders otherwise, (ii) prohibits last-minute changes in polling sites absent an emergency, and (iii) requires notice of changes. It does not establish or relax procedural requirements or mean that the kind of "change" it describes is somehow not also a "designation."

(d)(1) Except for school elections under § 6-14-106, the polling sites for each election shall be the same as those established for the immediately preceding general election unless changed by order of the county board.

(2) The county board shall not change a polling site for any precinct less than thirty (30) days before an election, except in the event of an emergency.

(3)(A) Notice of a change made in a polling site shall be provided by posting information at the polling site used in the last election and by the county clerk mailing notice to affected registered voters at least fifteen (15) days before the election unless:

(i) The election is a school election;

(ii) The election is a special election; or

(iii) The change in polling sites is due to an emergency arising less than fifteen (15) days before the election.

(B) If the change in polling site occurs in a school election, special election, or due to an emergency arising less than fifteen (15) days before the election, notice of a change made in the polling site shall be provided by posting information at the polling site used in the last election.

A.C.A. § 7-5-101(d).

[5] *See generally* A.C.A. § 7-4-105(a) (Repl. 2011) ("concurring votes of any two (2) [county election commissioners] shall decide questions before them unless otherwise provided by law").

Generally speaking, election laws are mandatory if enforcement is sought before an election but merely directory – and failure to observe them is not cause to invalidate the election – if enforcement is sought after the election.[6] The rule has been applied in cases involving failures to comply with the law regarding polling places.[7] I have no reason to believe that the general rule would not apply to the SCBEC action at issue, the May election, and future elections.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM/JMB:cyh

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[6] *See, e.g. Alexander v. Davis,* 346 Ark. 310, 58 S.W.3d 330 (2001).

[7] *See, e.g., Henard v. St. Francis Election Committee,* 301 Ark. 459, 784 S.W.2d 598 (1990) (polls opened late); *Rogers v. Mason,* 246 Ark. 1, 436 S.W.2d 827 (1969) (polls closed early); *Luther v. Gower,* 233 Ark. 496, 345 S.W.2d 608 (1961) (only one polling site provided, though law required at least two); *Christenson v. Felton,* 226 Ark. 985, 295 S.W.2d 361 (1956) (alleged failure to properly determine precincts and designate polling sites).