



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

Opinion No. 2014-107

October 22, 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 questions about the unanimity requirement for a county board of election commissioners (a "CBEC") to designate a polling site.<sup>1</sup> Your questions are:

**Question 1:** Is it necessary to have a unanimous vote to close a designated polling place that is in violation of either the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990) or the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666-1730?

**Question 2:** Do the above-listed federal statutes preempt A.C.A. § 7-5-101(a)(2)?

**Question 3:** Hypothetically, if a polling place is not owned by Sebastian County, is Sebastian County nevertheless financially responsible for making the site compliant with the above-listed federal statutes?

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<sup>1</sup> See A.C.A. § 7-5-101(a)(2) (Supp. 2013) ("Except as provided in § 6-14-106 [relating to polling sites for school elections], the designation of polling sites shall be by a unanimous vote of the members of the [CBEC] present").

## RESPONSE

In my opinion, the answer to your first two questions is “no,” but a unanimous vote is required to designate a new polling site to serve voters of a precinct whose polling site is closed for non-compliance with federal law or any other reason. I respectfully decline to answer your third question, which appears to be strictly a matter of federal law.

## DISCUSSION

***Question 1: Is it necessary to have a unanimous vote to close a designated polling place that is in violation of either the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990) or the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666-1730?***

In my opinion, the answer is “no,” but unanimity is required to designate a polling site to replace the one closed.

A CBEC has three members.<sup>2</sup> “[T]he concurring votes of any two (2) shall decide questions before them unless otherwise provided by law.”<sup>3</sup> I know of no law providing otherwise with respect to a CBEC decision to close a polling site. It is thus my opinion that CBEC unanimity is not required to close a polling site.

Obviously, however, when a polling site is closed, another polling site must be designated to serve the voters who had used the closed site. As stated above, CBEC unanimity is required to designate a polling site. The unanimity requirement applies, in my opinion, whenever a CBEC changes a precinct’s polling site, even when it merely assigns the precinct’s voters to a site already being used by other voters.<sup>4</sup>

***Question 2: Do the above-listed federal statutes preempt A.C.A. § 7-5-101(a)(2)?***

In my opinion, the answer is “no.”

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<sup>2</sup> See A.C.A. § 7-4-102(a)(2) (Supp. 2011).

<sup>3</sup> A.C.A. § 7-4-105(a) (Supp. 2011).

<sup>4</sup> See Op. Att’y Gen. 2014-068, 1 n.2.

Federal law is “the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”<sup>5</sup>

[T]he Supremacy Clause . . . invalidates state laws that frustrate or interfere with federal law. Federal law may preempt state law expressly by explicitly prohibiting state regulation in a particular field or implicitly by thoroughly occupying the field of regulation. Preemption also occurs where there is a direct conflict between federal and state law.<sup>6</sup>

The Americans with Disabilities Act, among other things, prohibits public entities from discriminating against disabled persons in the provision of services, programs, and activities,<sup>7</sup> including voting.<sup>8</sup> The Help America Vote Act, among other things, provides for federal payments to state and local governments to make polling sites accessible to people with disabilities.<sup>9</sup>

In my opinion, the unanimity requirement is not “to the Contrary” of anything in the ADA or HAVA and accordingly is not preempted by either. There is no direct conflict between federal and state law. The federal laws you cite do not expressly prohibit state procedural requirements relating to polling site designation. Neither do they impliedly do so by occupying the field; they do not address such procedural requirements at all and therefore occupy no part of the field.

One can, of course, point to the unanimity requirement as a practical impediment to a CBEC majority’s determination to do something that, in that majority’s estimation, is necessary to comply with federal law. But the fact that a local government can fail or refuse to comply with federal law does not somehow negate the rules dictating how local governments operate.

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<sup>5</sup> U.S. CONST. art. VI. cl. 2.

<sup>6</sup> *Gunter v. Farmers Ins. Co., Inc.*, 736 F.3d 768, 771 (8th Cir. 2013) (citations omitted).

<sup>7</sup> See 42 U.S.C. § 12132.

<sup>8</sup> See 42 U.S.C. § 12101(a)(3).

<sup>9</sup> See 42 U.S.C. § 15421.

***Question 3: Hypothetically, if a polling place is not owned by Sebastian County, is Sebastian County nevertheless financially responsible for making the site compliant with the above-listed federal statutes?***

The law requires me to render opinions to certain public officials on questions of state law.<sup>10</sup> This office’s opinions function does not extend to questions of federal law except to the extent those questions involve interpretation of state law.<sup>11</sup> Your question appears to be strictly a matter of federal law and I must respectfully decline to answer it.

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

Sincerely,



DUSTIN MCDANIEL  
Attorney General

DM/JMB:cyh

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<sup>10</sup> A.C.A. § 25-16-706 (Repl. 2002).

<sup>11</sup> See, e.g., Op. Att’y Gen. 2012-134 and opinions cited therein.