

State Board of Elections Policy 2008-004

A meeting of the Virginia State Board of Elections was held on September 8, 2008 whereby a policy was proposed and approved by the Board:

Definition of Inoperable or Unavailable Equipment

WHEREAS, the Code of Virginia, § 24.2-646.1 states, in part:

The official paper ballot shall be used by a voter to cast his vote only in one of the following circumstances: [...]

4. The voter is provided an official paper ballot or copy thereof pursuant to § 24.2-642 when *voting equipment is inoperable or otherwise unavailable*.
[Emphasis added.]

WHEREAS, the Code of Virginia, § 24.2-642 states, in part:

C. If (i) the *inoperative device* cannot be repaired in time to continue using it at the election, (ii) a substitute device is needed to conduct the election but is not available for use, (iii) the supply of official paper ballots, or other official ballots that can be cast without use of the inoperative device, is not adequate, and (iv) the local electoral board approves, an officer of election may have copies of the official paper ballot reprinted or reproduced by photographic, electronic, or mechanical processes for use at the election.
[Emphasis added.]

WHEREAS, in the absence of a contrary definition, the words in a statute are presumed to have their usual and ordinary meaning. See, e.g., 2008 Op. Va. Att’y Gen 028;

WHEREAS, Merriam-Webster’s dictionary defines inoperable and inoperative as “not functioning”

WHEREAS, Merriam-Webster’s dictionary defines unavailable as “not available, accessible, or at hand,” and

WHEREAS, optical scan voting equipment requires ballots specifically programmed for their model of voting equipment, ballot style, and precinct in order to operate; now therefore, be it

RESOLVED, by the State Board of Elections under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to § 24.2-103, that

At any time a polling place does not have any available optical scan ballots of the type required by the optical scan reader in their polling place, of any style of ballot in use in the polling place, the optical scan reader will be deemed inoperable for the purposes of Title 24.2 of the Code of Virginia and that ballot style.

At any time a polling place does not have access to any voting equipment, the voting equipment will be deemed unavailable for the purposes of Title 24.2 of the Code of Virginia.

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