

To: Hon. John Hager
Hon. Jean Jensen
and the esteemed members of the GR/EB Workgroup,

May 8, 2015

Dear members,

The elections community owes all members of the GR/EB Workgroup a debt of gratitude for your unselfish devotion to improving the electoral process. A special “thank you” to Renee Andrews for creating the document on Electoral Board duties. It is well presented and demonstrates a great deal of thought.

The diversity of Virginia localities is reflected in the diversity of ways local Electoral Boards execute their duties. Undoubtedly, activity and competency levels vary among and within Electoral Boards. While the list presented may be duties that many Electoral Boards perform, it does not necessarily reflect the level of competency to which Boards perform their duties.

As a former Electoral Board member, I would never have considered myself to have been competent to have an intimate knowledge of all applicable election laws pertinent to election administration. I admit I made the same mistake many people do in confusing involvement in political campaigns as being a good background for managing an election. Election administration gets more complex every year. There is no way a person devoting a handful of hours a month can attain and retain the knowledge and skills necessary to effectively administer an election. Some of the duties listed can directly interfere with effective election administration.

Like many Board members, I was told the job would only take a few hours a month and I didn’t have to do much except for a few days before, during and after the election. Training electoral board members has frequently fallen on the shoulders of the General Registrar. The result is a very uneven approach and less uniformity throughout the Commonwealth.

My greatest concern is that many jurisdictions are at increased risk of an unpleasant outcome if incompetent Board members have authority in how elections are managed and administered, rather than simply overseeing the process. Based on my experiences in our 15,000 voter jurisdiction, I offer the following comments in bold type following the initial remark.

Election administration includes:

A) Selection of polling places within the precincts established by the local government.

I cannot find this in the Code, but I can find §24.2-307 which states, “The governing body shall establish by ordinance one polling place for each precinct.” While I think it is a great idea for the political parties, through their representatives on the Electoral Board, to participate in the decision, it would be risky to give them the sole authority. The local governing body needs to acknowledge that the Electoral Board will work with election administrators to make a recommendation. It is the full time employee whose career gets damaged when things go wrong.

B) Approval of voting equipment.

I find no authority in the law for this. §24.2-626 states, "Governing bodies shall acquire electronic voting and counting machines." This is NOT a legal duty of local Electoral Boards. While I think it is a great idea for the political parties, through their representatives on the Electoral Board, to have a voice, it would be risky to give them the sole authority.

C) Development and implementation of a security plan to keep all equipment and materials secure.

Yes. §24.2-625.1(D) requires the Electoral Board develop a plan, but does not mention implementation. This would be consistent with the concept that the Electoral Board is responsible for policy and oversight but not administration or management of elections.

D) Creation, production and custody of ballots.

Creation of ballots has become an increasingly complex job, most often left up to the election professionals. I think approval of ballot creation would be beneficial if it did not delay the process unreasonably. Oversight of production is not a reality. Custody could be a real problem when Board members cannot provide ballots to the Director of Elections on a timely basis during the 46 day absentee window. Perhaps the workgroup can recommend some changes to §24.2-612, the reality of the process is the GR deals with ballots in most cases as assigned by the EB in §24.2-114(18).

E) Conduct Logic and Accuracy (L&A) test to be sure equipment is programmed correctly for each election.

The Electoral Board should provide oversight and policy, but the individual members generally do not know enough about the equipment to do much else. This may be a good time to address changing §24.2-632 to reflect the reality that in most, if not all, jurisdictions it is the Director of Elections that manages the voting equipment.

F) Assistance in conducting absentee voting.

This should not be a requirement or a duty, but help is always appreciated. However, this assistance needs to be left up to the discretion of the Director of Elections. This is a great place where the political parties, through their representatives on the Electoral Board, can monitor the process just like any member of the public.

G) Appointment, training, assignment and review of precinct officers of election.

- ***Appointment, yes.***
- ***Training, only at the discretion of the Director of Elections. Assignment, only at the discretion of the Director of Elections.***
- ***Performance review should be shared with the Director of Elections. This might be a good opportunity to take a close look at §24.2-115. Perhaps the code needs to be updated to come closer to modern reality. If there is going to be a failure at a polling place it will almost always be traced back to inadequate training. It is too important of a job to have anyone other than a professional do.***

H) Coordination with other local government departments (e.g., police, sheriff, public works, IT, schools) to ensure smooth conduct of each election.

It should be a very clear this authority comes from the Director of Elections. We have had problems with Electoral Board members wrongly assuming authority and creating havoc, confusion and threatening the integrity of the election as well as damaging respect for the General Registrar's Office. The result is it becomes more difficult get cooperation the next time it is needed.

I) Assistance in procuring, packing and delivering supplies to polling places.

The General Registrar does procuring and packing. The Electoral Board monitors deliveries. This needs to be done under the authority of the Director of Elections. This can be a huge job and needs to have a single person responsible but with the Electoral Board creating policy and given the opportunity to review the plan.

J) Setup of polling places prior to each election.

No, not unless it is clear they are doing this under the authority of the Director of Elections. Certainly the Electoral Board needs to have some input, but once again it is a very important job that needs to have a single point of responsibility.

K) Assistance in polling places and offices as needed on Election Day. Availability to respond to inquiries from media or voters.

Yes, as directed by the Director of Elections. It would be nice if the media inquiries were clear that the Electoral Board member is responding as a Board member and not as the Election Administrator.

L) Conduct of post-election canvass to ascertain that all precinct results are accurate and complete.

Yes. I think it is a great idea for the political parties, through their representatives on the Electoral Board, to perform this task as a double check on the work of the Elections Administrator. This is an area that the Electoral Board members need training and guidance.

M) Determination of validity and counting of provisional ballots.

Yes; however, the GR does the research and recommends. The Electoral Board must stay within the confines of the law. This is an area that electoral board is sorely in need of training. The electoral board is much like a jury that needs guidance from legal professionals.

N) The Electoral Board's signatures on the certification of results following the canvass is the ultimate declaration of the truth, accuracy and dependability of the vote totals being submitted to the Commonwealth and is thus the foundation of the democratic process.

Yes.

The Electoral Board has additional responsibilities, including:

O) Appointment, removal and annual performance evaluation of General Registrar.

Yes. This is in the law code and there does need to be a process for the above, but, this is a little odd since Electoral Boards frequently do not have a good grasp of what the General Registrar really does. The appointment makes sense, but the review is somewhat awkward. Perhaps this should be a review of the policies, procedures and how well the Registrar accomplishes the required tasks. This is an area where guidance and training the Electoral Board members would be helpful with a focus on the objectives of administering an election.

P) Certification of candidate petitions and financial reports.

No. The General Registrar and staff do this. The only time the Electoral Board needs to get into the petition process is upon an official appeal. §24.2-511 needs to be changed to reflect this.

Q) Conduct of meetings in accordance with the Freedom of Information Act (FOIA). **This is a challenge. There is no effective monitoring and enforcement mechanism in place. This is another area sorely in need of Electoral Board member training.**

R) Familiarity with federal and state laws that must be followed in conducting elections.

This is a challenge but certainly a goal the Electoral Board members should aspire to. Perhaps there should be some sort qualifying testing and certification for each member.

S) Attendance at training programs provided by Virginia Department of Elections (ELECT).

I would suggest the word "attendance" be struck and replaced with "participation."

T) Together with the General Registrar, administration of the Office of Elections, including budgeting and dealing with local government officials.

This is a duty exclusively conducted by the General Registrar. The Electoral Board is partisan. Most locally elected officials are elected on a non-partisan ballot. The Director of Elections is non-partisan. There is too much of a risk the Office of Elections will appear to be partisan. On a more practical note, the Registrar, as an employee of the local government, has a much better concept of how the local government functions. This is a great opportunity for the Electoral Board members to provide support to the Director of Elections.

U) The Secretary of the Electoral Board has specific tasks and responsibilities according to the Code and must take and keep accurate minutes of all board meetings.

There is no enforcement of this. This is an area where the Electoral Board members need training and guidance.

W) Writing ability to write training materials, legislative positions, or analyses.

Only in the event they are expected to.

X) Basic budgeting skills.

No.

Y) Knowledge of basic legal concepts and judicial proceedings; willingness to become deeply familiar with United States Code Title 52 and Virginia Code Title 24.2 governing Elections and administrative regulations thereunder.

Yes. This is a challenge but certainly a goal the Electoral Board members should aspire to. Perhaps there should be some sort qualifying testing and certification for each member.

The bottom line is that Virginia has designated political parties with the responsibility to conduct elections. Most “modern” election law dates back to when Bill Gates was still in high school. Elections have become too complex for a committee of three devoting little more than a few hours a month to effectively conduct. However, such a committee can monitor and oversee that the appointed Director of Elections does the job proficiently. De facto most Electoral Boards have delegated the responsibilities of election management and administration to the General Registrars, but some Electoral Board members still try to hold on to the authority. Authority without responsibility is a not a good idea. The integrity of elections is at risk when a political appointee (i.e. Electoral Board member) abuses their authority for political gain. The GR/EB Workgroup has an excellent opportunity to clarify the distinctions between Electoral Boards and General Registrars and bring Virginia elections in to the modern era.

I ask that the Workgroup consider taking the perspective that the authority to conduct and manage elections be assigned solely to the professional Director of Elections and the Electoral Board be limited to oversight.

Respectfully,

Kevin Linehan, General Registrar

City of Fairfax