



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

June 20, 2006

Peter S. Kosinski
Co-Executive Director

Stanley L. Zalen
Co-Executive Director
New York State Board of Elections
40 Steuben Street
Albany, NY 12207

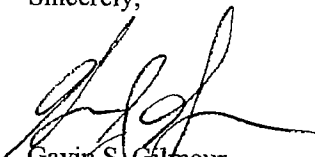
Dear Messrs. Kosinski and Zalen:

This letter responds to your inquiry of June 15, 2006, in which you requested a determination from the U.S. Election Assistance Commission regarding the need to obligate Federal funds to meet the requirements of the Help America Vote Act (HAVA) §301(a)(3)(C) (42 U.S.C. §15481(a)(3)(C)). After reviewing your request, the Commission finds that New York does not need to obligate its HAVA Title II funds by January 1, 2007 to avoid HAVA §301(a)(3)(C)'s purchase restrictions. That section of HAVA applies only to Title II funds made available to New York after January 2007.

The HAVA section at issue states that all voting systems "**purchased with funds made available under Title II on or after January 1, 2007**" must be accessible to people with disabilities. You have proposed that this section "requires the State to have committed its funds for the purchase of compliant voting systems by December 31, 2006 in order to provide one fully accessible voting system per polling place; after that point, every system purchased with federal funds would have to be fully accessible." This interpretation is incorrect. The key factor in applying HAVA §301(a)(3)(C) is determining when funds were "made available under Title II," not the date the funds were expended. Thus, the requirements of HAVA §301(a)(3)(C) only apply to Federal money "made available" to states after January 1, 2007. Funds are "made available" when properly transferred to a state for use. As New York's Title II funding was clearly provided to the state prior to January 2007 and is "without fiscal year limitation" (42 U.S.C. § 15304(b)); the funds remain available for use consistent with their original purpose until expended.¹

Please contact the undersigned at (202) 566-3100 if you have any questions concerning the above.

Sincerely,



Gavin S. Gilmour
Deputy General Counsel

¹ Please note that this opinion only applies to the use of Title II money. There may be deadlines for the use of other HAVA funding, such as those funds provided under HAVA §102. As you know, New York is required to expend the HAVA §102 funds it received (\$49,603,917), consistent with the requirements of that section, before its first Federal Election in 2006 (September 12, 2006).



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15 June 2006

Mr. Thomas R. Wilkey
Executive Director
Elections Assistance Commission
1225 New York Avenue NW Suite 1100
Washington D. C. 20005

Dear Mr. Wilkey,

We understand that HAVA, Section 301(a)(3)(C), requires the State to have committed its funds for the purchase of compliant voting machines and systems by December 31, 2006 in order to provide only 1 fully accessible voting system per polling place; after that point, every system purchased with federal funds would have to be fully accessible. Additionally, under our state law, only voting machines and systems which have been certified by the State Board of Elections may be purchased and used in elections in the state.

The State Board adopted regulations for the certification of voting systems which comply with both HAVA and state requirements, on April 20, 2006. We will be issuing an RFP on June 20th, seeking vendors with compliant systems to contract with NYS to sell their systems here. It is a condition of the result contract, that the machines and systems proffered by the responding vendors, be certified by the State Board of Elections before counties can purchase them. Pursuant to state law, the responses to the RFP will be opened on August 20th.

Vendors wishing to sell voting machines or systems in NYS during this first wholesale replacement purchase, will have to submit their completed applications and their technical data packets to the State Board by mid-July, in order for us to begin certification testing in August.

At that point we will know which vendors intend to have us certify voting machines and systems, and our counties will be in a position to begin the process of deciding which systems they wish to purchase. We anticipate completion of the certification process by December 1st.

Our question is whether or not this process, which concludes with certification, is sufficient to constitute a commitment of our federal funds pursuant to the requirements of HAVA. Your prompt response is greatly appreciated.

Respectfully,

Peter S. Kosinski
Co-Executive Director

Stanley L. Zalen
Co-Executive Director