



THE UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

CLAUDE EARL WALKER, ESQUIRE
ATTORNEY GENERAL

November 10, 2018

ADVISORY LETTER

By Electronic Mail Only

Caroline F. Fawkes, CERA
Supervisor, Elections System of the Virgin Islands
Sunny Isle Annex Unit 4, 93A
Christiansted, VI 00823

Board Members St. Croix
Virgin Islands Board of Elections
Sunny Isle Annex Unit 4, 93A
Christiansted, St. Croix USVI 00823

Board Members St. Thomas/St. John
Virgin Islands Board of Elections
Lockhart Gardens
Charlotte Amalie, USVI 00802

Re: Advisory letter on the legality of registering new individuals for a run-off election

Dear Supervisor Fawkes and Board Members:

At the request of a number of Virgin Islands Board of Elections members, the Department of Justice ("DOJ") was requested to issue an advisory letter on DOJ's interpretation of the election laws in relation to the question of who can legally vote in the upcoming November 20th run-off election for the positions of Governor and Lt. Governor. This advisory letter supersedes all previous opinions or advisories that may have been issued by the Office of the Attorney General on this matter.

BACKGROUND

On November 6, 2018, citizens of the Virgin Islands participated in a general election which, among other offices, was to decide which candidates would serve as the next Governor and Lt. Governor of the territory. The results of that race did not produce enough votes for any one particular Governor/Lt. Governor team, as is required under the Revised Organic Act of 1954, as amended, and as a result, a run-off election between the top two (2) contenders is scheduled for November 20, 2018.

Then, on Friday, November 9, 2018, the Board of Elections (“Board”) held a meeting in order to discuss details pertaining to the run-off election, and among the issues raised at the meeting was whether the Board would allow the registration of new voters between now and the run-off, and whether any newly-registered voters could legally vote in the upcoming run-off. That meeting, however, was cut short with no resolution. Because of the uncertainty of these issues, numerous members of the Board have contacted DOJ for formal guidance on the matter.

ISSUE PRESENTED

Whether potential voters—who were not qualified electors prior to the November 6, 2018 election—can be registered and legally vote in the run-off election given the language in 18 V.I.C. § 94(c).

ISSUE ANSWERED

No. A run-off election is a continuation of a general election and only those individuals who were registered and qualified to vote in the November 6th election are qualified to vote in the run-off.

DISCUSSION

In the instant matter, 18 V.I.C. § 1 provides two useful definitions to be used in construing the local election statutes. First, “‘election’ means any general or primary election, unless otherwise specified or indicated as in the term ‘primaries and elections’ where the intention is to refer to primary elections and general elections.”

Second, “‘run-off election’ means **an election** that allows for the selection between the choices receiving the first and second largest number of votes cast in the **general election**.” *Id.* (emphasis added).

Based upon the plain language of the two definitions, it is apparent that the term “run-off election” is included in the definition of general “election.” Because a “run-off election” is an election, and it only applies in situations involving a general election, it must follow that a “run-off election” is intended to be a continuation of the general election. Based upon this interpretation, only those eligible voters who were qualified to vote in the November 6, 2018, general election shall be qualified to vote in the upcoming run-off election.

This interpretation is supported by virtually every other U.S. jurisdiction. For example, in Georgia, O.C.G.A. § 21-2-501, provides, “Only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided, . . . The run-off primary or election shall be a **continuation of the first primary or election**, and only those votes cast for the candidates receiving the two highest numbers of votes in the first primary or election shall be counted.” (emphasis added).

In Guam, 3 GCA § 13108, provides that “Persons eligible to vote in a run-off election shall be **the same voters who were eligible to vote at the election that precipitated the need for the**

run-off. When a run-off election is required, the Commission shall not purge the names of any voters for non-participation after a general election until after the run-off election has been held and its results certified.” (emphasis added).

In addition, in Alabama, Code of Ala. § 17-13-7.1, states that “If an elector votes in a primary election, he or she may vote in a subsequent primary run-off election only if he or she voted in the primary election of the same political party for which the run-off election is being held.”

This line of reasoning follows in the Virgin Islands under 18 V.I.C. § 94(c), which states that:

The Board of Elections. . . shall sit for the purpose of examining and registering qualified electors on such days and at such times and places in addition to those provided in subsection (a) of this section as it may deem necessary or advisable for the accommodation of electors, **except that no electors shall be registered during the period of 30 days immediately preceding and five days immediately following each election.** (emphasis added)

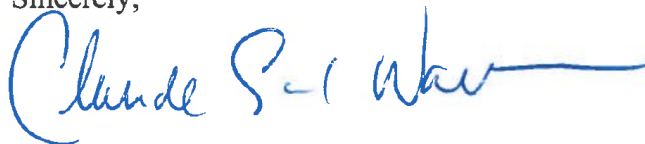
In other words, to comport with the strictures of Section 94, qualified electors must have been registered 30 days “immediately preceding” the November 6th general election.

Therefore, only those individuals who were qualified to vote for the November 6th election are eligible to vote in the November 20th run-off election. The Board must not register any new voters—in either district—between now and until five days after the run-off election.

CONCLUSION

The scheduled run-off election is a continuation of the general election that was held on November 6th and, pursuant to V.I.C. § 94(c), the Board must not register new voters between today and five days after the November 20th run-off election occurs.

Sincerely,

A handwritten signature in blue ink that reads "Claude Earl Walker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claude Earl Walker, Esq.
Attorney General