



Goochland County Electoral Board  
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June 20, 2019

The Honorable Mark R. Herring  
Office of the Attorney General  
202 N. Ninth Street  
Richmond, Virginia 23219

RE: ATTORNEY GENERAL'S OFFICIAL ADVISORY OPINION

Dear Sir,

Pursuant to the Code of Virginia: § 2.2-505. Official opinions of the Attorney General.

A. The Attorney General shall give his advice and render official advisory opinions in writing only when requested in writing to do so by one of the following: ... a ... secretary of an electoral board; ...

On behalf of the Goochland County Electoral Board, I write to ask for an official advisory opinion on the legality of removing registered voters from the Voter Registration Rolls of the county in which they are known to reside, to place them on the Voter Registration Rolls in an adjoining county where they are not residents.

**Background:**

The boundary between Goochland and Louisa Counties was established in 1742 when Louisa County was created from Hanover County. Although the county line was reportedly never subject to a formal survey agreed to by the two counties, the boundary was recognized by residents and property owners, ratified by Commissioners of Revenue and County Treasurers, and accepted by custom and common practice. The boundary, following natural features and property lines, has been recognized for the purposes of real estate taxation, school attendance and voter registration for over 280 years.

With the introduction of modern mapping technologies within Graphical Information Systems, a US Bureau of the Census line was imposed along the Goochland /Louisa County line which did not follow the boundaries accepted by the two counties and the local residents. Although anomalies and inconsistencies were identified by the General Registrars of both counties following the 2010 Census and 2011 Redistricting, the two county administrations did not feel any urgent compulsion to take remedial action.

Following the 2017 General Election, reports emerged of multiple instances of mis-assigned voters in House of Delegates Districts. The Department of Elections identified at least 384 voters in the 2<sup>nd</sup>, 28<sup>th</sup> and 88<sup>th</sup> Districts who were mis-assigned and 147 of them cast ballots — well beyond the margin of victory in the 28<sup>th</sup> District which was won by only 108 votes.

Famously, in the 94<sup>th</sup> District, initial results showed the winner with only a 10-vote margin; that ‘victory’ devolved to a tie after a recount. That tie was settled by drawing a name from a bowl and the result determined the partisan control of the Speaker and all House Committees.

Following this election, multiple groups and individuals throughout the elections community sought clarification and guidance.

In a June, 2018 presentation to the State Board of Elections, newly-appointed Commissioner Chris Piper reviewed the issue of mis-assigned voters; he acknowledged errors in GIS mapping and introduced the technical term “Sneeze Line” which sometimes accounted for Census Line aberrations that did not follow established boundaries. He stated that the Department of Elections has no statutory authority over voter assignment, and although it could assist, “it would require the locality to make the final decision on district assignment.”

County Administrators in Goochland and Louisa began a concerted effort to have their GIS departments reach agreement on the actual agreed-upon boundary. Over a period of almost 10 months the two GIS analysts came to agreement and in May, 2019 submitted identical files to the US Bureau of the Census for a correction of the Census Line.

During that same period, Senator Mark Peake, who represents both Goochland and Louisa, worked closely with stakeholders and drafted legislation to address the problem. His bill, SB 1120, included language that would have permitted local registrars to determine residence by reference to local governing bodies who could decide by mutual agreement.

#### ***§ 24.2-314. Review of voter assignment.***

*If a registered voter believes he has been incorrectly assigned to an election district or precinct, he may submit to the general registrar of the locality in which he is registered to vote, on a form prescribed by the State Board, a request for review of his assignment. Such request shall be submitted prior to the close of registration records pursuant to § 24.2-416. He shall submit with the request any information or evidence documenting his reasons for believing he has been incorrectly assigned to an election district or precinct. If the general registrar is unable to determine in which election district or precinct the voter should be assigned because of a discrepancy between (i) the boundary of the county or city in existence on April 1, 2011, and as reported by the United States Bureau of the Census in the 2010 Census reports provided pursuant to United States Public Law 94-171 and (ii) the boundary of the county or city recognized by the governing body of the county or city, the general registrar shall refer the matter to the governing body of any impacted county or city to determine, by mutual agreement, in which county or city the voter's residence is located. Upon resolution of the matter, the appropriate general registrar shall be promptly notified so that the voter's registration may be updated to change his assignment to the correct election district or precinct if necessary.*

This bill passed unanimously in the Senate but was unexpectedly derailed in a House subcommittee. Following the failure of this bill, the Louisa County General Registrar felt compelled to move voters to comply with the Census Line rather than the historical boundary.

On April 15, 2019 the Goochland County Electoral Board voted to accept Registered Voters in Louisa County being removed from the Louisa County Voter Roll and to remove Registered Voters in Goochland who were being transferred to the Louisa County Voter Roll. Subsequent tallies showed 97 voters being moved from Louisa to Goochland Rolls and 227 being moved from Goochland to Louisa Rolls.

These voters are being moved for voting purposes only. They will continue to be taxed in their respective jurisdictions and served by their existing school, sheriff, fire and rescue operations. When the anticipated corrections are made in the Census Line by the US Department of Census for the 2020 Census, these voters will be returned to their respective Voter Rolls from which they are now removed.

## **DISCUSSION**

There is naturally a great deal of consternation among the voters who have been moved.

There is a sense of bewilderment that the local Electoral Board would move voters from one county to another in the full and open knowledge that it intends to move them back when a Census Bureau error has been corrected.

There is resentment that wells up from the fundamental belief that American citizenship is founded upon the premise that we will not suffer “Taxation without representation.”

There is, of course, the question of the interpretation of the Code, which states identically in §24.2-302.2. B, §24.2-303.3. B and § 24.2-304.3. B:

B. All references in this section to boundaries of counties and cities shall be interpreted to refer to those in existence on April 1, 2011, and as reported by the United States Bureau of the Census in the 2010 Census reports provided pursuant to United States Public Law 94-171, notwithstanding subsequent boundary changes by law, annexation, merger, consolidation, or the voiding of boundary changes theretofore made final.

The language is ambiguous. A superior clause is separated by an “Oxford comma” preceding a conjunction that introduces a subordinate clause that is, in this instance, in conflict with the superior clause.

## **THE QUESTIONS:**

(1) If the language in §24.2-304.03-B is contradictory, inasmuch as it refers to “*boundaries ... in existence on April 1, 2011,*” and then “*and as reported by the United States Bureau of the Census in the 2010 Census reports provided pursuant to United States Public Law 94-171,*” shall a locality be compelled to ignore the superior clause in favor of the subordinate clause when the Census line produced by the US Bureau of Census is known to be in error?

(2) In the absence of a court order, is the Electoral Board permitted to change the boundaries of existing precincts in violation of the prohibition in § 24.2-309.2:

No county, city, or town shall create, divide, abolish, or consolidate any precincts, or otherwise change the boundaries of any precinct, effective during the period from February 1, 2019, to May 15, 2021...

With the General Election only 142 days away, we urgently request an Official Advisory Opinion to guide Electoral Board members throughout the Commonwealth. Time being of the essence, this request is being sent by email with a written copy on paper sent by USPS.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Lind". The signature is written in a cursive style with a large initial "R" and "L".

Robin R. Lind  
Secretary, Goochland County Electoral Board

Cc: Keith Flannagan, Chair, Goochland County Electoral Board  
Wanda Taylor, Vice Chair Goochland County Electoral Board  
Ryan Mulligan, Goochland County General Registrar/Director of Elections.  
John Budesky, Goochland County Administrator