



Iowa General Assembly

2004 Legal Updates

Legislative Services Agency – Legal Services Division

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Attorney General Opinions and Letters of Informal Advice. *Attorney General Opinions and Letters answer questions of a public nature that relate to a public official's duties. The Iowa courts give respectful consideration to Iowa Attorney General Opinions but are not bound by them. A letter of informal advice represents the position of an individual attorney and is not considered binding.*

ATTORNEY GENERAL INFORMAL ADVICE LETTER: FEDERAL HELP AMERICA VOTE ACT (HAVA) ELECTION ISSUES - CITIZENSHIP CHECK BOX ON VOTER REGISTRATION FORMS

Check Box on Voter Registration Forms
October 20, 2004

Background. On October 20, 2004, the Office of Attorney General provided the Iowa Secretary of State with a letter of informal advice relating to processing of mail-in voter registration forms that were incomplete because the registrant did not check the box to indicate that the registrant is a U.S. citizen. The Secretary of State had inquired whether Iowa's law, requiring that these voter registration forms be flagged as "local" and therefore invalid for federal elections violated HAVA. The Secretary of State further inquired whether eligible voters who submit such incomplete forms should be fully registered and the rules of the Voter Registration Commission changed accordingly. The letter advised the Secretary of State that registrants "who submit a registration form which is complete in all other respects, but upon which the applicant has failed to mark either yes or no to the citizenship question, should be treated as fully registered for state, local, and federal elections." The letter further advised the Secretary of State that such registrants should be notified of the omission and given an opportunity to complete a new registration application at any time before the next federal election.

Relevant HAVA Provisions.

Section 303(b)(4)(A) of HAVA states in part:

"(A) In general.—The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States."

Section 303(b)(4)(B) of HAVA reads as follows:

"(B) Incomplete forms.—If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law)."

Relevant Iowa Law Provisions. To comply with the provisions of HAVA, the General Assembly enacted Senate File 2269 (2004 Iowa Acts, ch. 90). Senate File 2269 amended Iowa Code sections 48A.11 and 48A.26 to require that the question about citizenship be included on voter registration forms that may be used for registration by mail. Senate File 2269 also required the registrar to flag a mail registration as "local" if the applicant failed to check either box on the citizenship question, but submitted an otherwise complete form, which form includes an affirmation swearing that the applicant is a U.S. citizen and requiring the applicant's signature to the affirmation. As provided in Senate File 2269, registrants whose registration is flagged as "local" are notified that they are not qualified to vote in any elections with federal offices on the ballot but are qualified to vote in elections that have only state and local offices on the ballot. If the original application was received during the twelve days before the close of registration, they are further notified that they

may complete another registration application form at any time before the close of registration. In Iowa, for primary and general elections, registration closes at five p.m. ten days before the election.

Analysis. The informal advice letter of the Office of Attorney General asserts that the “local status” registration provision of Iowa law violates the intent of HAVA and further violates the Federal Civil Rights Act of 1964 because it creates a barrier to voting in federal elections that is not applied to state and local elections. In other words, under Iowa’s law, failure to check either the yes or no box as to citizenship has the effect of being an immaterial omission for purposes of registering to vote in state and local elections but a material omission for purposes of voting in federal elections. Employing this type of distinction is prohibited by the Federal Civil Rights Act of 1964. Therefore, a registration applicant who applied by mail and who completed the application in all respects except for answering the citizenship question should be considered registered for state, local, and federal elections and should be provided a new registration application, and the opportunity to complete it, prior to the next federal election.

LSA Contact: Susan Crowley, Legal Services, (515) 281-3430