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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
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April 26, 2016  
OPINION 16-0015

### 26-A ELECTIONS –Board of Supervisors

Theresa A. Robichaux  
Clerk of Court  
Terrebonne Parish  
P.O. Box 1569  
Houma, LA 70361

La. R.S. 14:134  
La. R.S. 18:423  
La. R.S. 18:1313

There is no legal authority governing the late arrival or early departure of Board members. As long as the Board member actually performed his job duty, then he may be compensated for his work. Prohibiting Board members from possessing phones or electronic communication devices during the counting and tabulation process is certainly within the authority of the Board under the statute. However, the statute does leave this decision to the Board, which would require a vote.

Dear Ms. Robichaux,

You have requested this opinion from our office regarding the Terrebonne Parish Board of Elections Supervisors ("Board"). More specifically, you have asked about meeting attendance, compensation, and usage of personal phones. Each of your questions will be answered in turn.

**1. If the Board has a quorum and begins the meeting, does anyone on the Board have the authority to instruct a late member that his or her services are not needed and there is no need to sign in to the meeting?**

Under La. R.S. 18:423(l), "[e]ach parish board of election supervisors shall conduct its business in the presence of a quorum." There is no other provision regarding late arrival or early departures. As long as a quorum is met, the Board may conduct business. Furthermore, La. R.S. 18:423(B) states that, "[t]he parish board of election supervisors shall supervise the preparation for and the conduct of all elections held in the parish." Shall is mandatory under the law, therefore the members of the Board are required to conduct business in a quorum.<sup>1</sup> However, there is no legal authority governing the late arrival or early departure of Board members. We note that any failure for an official to perform his or her required duty may be considered malfeasance in office under La. R.S. 14:134. We also note that quorum may be lost at any time due the absence of a majority of members. Board business may not continue in the absence of a quorum.

**2. If a Board member does sign in, but leaves before his or her duties are complete, does that member still receive compensation for that meeting?**

La. R.S. 18:423 provides, "[e]ach member of the parish board of election supervisors shall receive fifty dollars for each day, not to exceed six days, actually spent in the

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<sup>1</sup> La. R.S. 1:3.

performance of his duties in preparing for and supervising each election held in the parish." Our office answered a similar question in La. Atty. Gen. Op. No. 01-417(A), in which we stated:

Although the phrase "preparing for and supervising each election" is not defined by law, it is our opinion that any action performed by the board member in the preparation of and/or supervision of the election is covered. Examples in the Election Code include meeting to select commissioners, publishing notices, consolidating polling places, issuing commissions to replacement commissioners-in-charge, accepting the filing list of watchers, issuing commissions to watchers, meeting to select absentee commissioners to count absentee ballots, reducing the number of absentee commissioners, counting and tabulating absentee ballots, assisting in the opening of the voting machines, and recording the election results. Examples which are not mandated by the law, but which certainly fall within the meaning of "preparing for and supervising each election" would include the example in the board's letter of informing and instructing a commissioner-in-charge at a polling place of a 600 foot political advertising violation, which means that the board member was supervising the election by observing the polling place. Another example would be if a board member chose to observe the sealing of voting machines.

Our office also cautioned that:

We are aware that payment of the board member is by the State, through the office of the Commissioner of Elections. We therefore assume that each board member certifies in writing to the Commissioner the number of times he performed his job in order for the \$50 day/\$250 max payment to be received. Thus, we point out that any knowing, willful or intentional false statement in such a matter by the board member would be punishable as a crime under R.S. 18:1461(A)(13), (B), and (C)(1), including but not limited to forfeiture of public office.

The analysis provided in La. Atty. Gen. Op. No. 01-417(A) is applicable here. Therefore, as long as the Board member actually performed his or her job duty, then he or she may be compensated for his or her work. Whether or not he or she has performed his or her job duty is a fact determination that cannot be made by this office.

**3. During counting of the early votes, does the Board have authority to request that Board members refrain from bringing their phone into the room as to avoid any appearance of impropriety during the early vote count?**

La. R.S. 18:1313(A) provides that, "[t]he parish board of election supervisors shall be responsible for the counting and tabulation of all absentee by mail and early voting ballots in the parish." Furthermore, La. R.S. 18:1313(C)(1) provides:

If the counting and tabulation of absentee by mail and early voting ballots begins prior to the closing of the polls, such counting and tabulation shall be conducted in a location and manner to prevent disclosure of the results prior to the closing of the polls. Each person except a person providing security to the parish board of election supervisors or a person providing technical assistance pursuant to Paragraph (2) of this Subsection who enters the location in which the absentee by mail and early voting ballots are being counted and tabulated shall remain in that location and shall not be allowed to leave except temporarily, and then only when accompanied by a law enforcement officer, and shall not communicate with any person outside until the polls are closed. *The parish board of election supervisors may take any action necessary to ensure that no information with respect to the counting and tabulation of absentee by mail and early voting ballots is transmitted from the location where the absentee by mail and early voting ballots are being counted and tabulated prior to the close of the polls on election day.*

(emphasis added). This provision specifically gives the Board the authority to take any action necessary to ensure no information about the counting and tabulation process is communicated until after the close of polls. Prohibiting Board members from possessing phones or electronic communication devices during the counting and tabulation process is within the authority of the Board under the statute. However, the statute leaves this decision to the Board, which would require a vote. Such a policy prohibiting phones or electronic communication devices could not be made by one individual or officer of the Board.

Additionally, La. R.S. 18:1313(D) provides:


Candidates, their representatives, and qualified electors may be present during the counting and tabulation of absentee by mail and early voting ballots. If the counting and tabulation of absentee by mail and early voting ballots begin prior to the closing of the polls, the board shall give notice reasonably calculated to inform any person who wants to be present during the counting and tabulation that no person will be allowed to leave or to communicate with any other person outside, until such time as the polls are closed, nor shall any person who is present during the counting and tabulation of absentee by mail and early voting ballots possess a cellular telephone or electronic communication device.

This provision specifically prohibits candidates, their representatives, and other qualified electors present during the counting and tabulation process from possessing cellular telephones or electronic communication devices. While this provision does not apply to Board members, it does specifically prohibit these groups from possessing electronic communication devices.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY  
ATTORNEY GENERAL

BY:   
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