

Legal Interpretation

As discussed in the staff report for the September meeting, Section 19234 (c) (3) of the Elections Code contains limitations on the use of proceeds of bonds issued in accordance with Proposition 41. The condition contained in paragraph (3) of that section states as follows: “The county has not previously requested fund money for the purchase of a new voting system. Applications for expansion of an existing system or components related to a previously approved application shall be accepted (emphasis added).” For purposes of Proposition 41, subdivision (f) of Section 19232 broadly defines the term “voting system” as “any voting machine, voting device, or vote-tabulating device that does not utilize prescored punch card ballots.”

Rules of statutory construction are applicable to both legislative enactments and statutory initiatives (*People v. Bustamante* (1997) 57 Cal.App.4th 693, 699, fn. 5), and a basic principle of statutory construction states that if the language of a statute is clear, its plain meaning should be followed (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38). Under a literal reading of the statute, a county is ineligible to receive funds if it has previously requested Proposition 41 funds for the purchase of a new voting system unless the application is for an expansion of an existing system or for the purchase of components related to a previously approved application.

However, the “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether a construction of one provision is consistent with the other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act (*People v. King* (1993) 5 Cal.4th 59, 69).

As was identified by the Board at the September meeting, much of the interpretation of this provision rests on the meaning of the term “voting system” in paragraph (3). The statutory definition of the term “voting system” is necessarily broad for purposes of the authorization of funds for the purchase of a voting system. Indeed, the definition could be construed to cover one (1) voting machine, or any combination of voting system equipment. However, in the context of Section 19234 (c) (3) it is unlikely that the proponents of Proposition 41 intended the phrase “new voting system” to mean one (1) voting machine. If that were the case, a county that applied for funds for one voting machine or other equipment would be precluded from securing funds for additional equipment based on such a prior application. A more appropriate reading of the term “voting system” in this context would refer to the overall modality of the voting system; whether the system is a punch card, optical scan, or DRE system.

In addition, the first sentence of paragraph (3) states a rule that, in and of itself would require counties to only apply for funds via one application. However, the second sentence, without using language of exception, details instances where subsequent applications will be granted. Thus, rather than stating a general rule and providing certain exceptions to that rule, the paragraph sets forth two separate rules that overlap and contradict each other in their application.

Therefore, because the definition of the term “voting system” is imprecise in the context of paragraph (3), and because, rather than stating a general rule and exceptions to that rule, the first and second sentences of paragraph (3) are, to an extent, contradictory and in conflict, paragraph (3) contains ambiguity in this regard. When the language of an initiative measure does not point to a definitive resolution of a question of interpretation, it is appropriate to consider indicia of the voter’s intent other than the language of the provision itself. Those indicia include the analysis and arguments contained in the official ballot pamphlet (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 16).

Proposition 41 was approved by the voters to “assist any county in the purchase of new voting equipment that is certified by the Secretary of State (emphasis added) (Ballot Argument, Proposition 41, enacted by the voters at the March 5, 2002 Primary Election). The ballot argument for this proposition argued for the issuance of these bonds citing the benefits of innovations in voting technology. The argument encouraged voters to bring the voting systems of the state up to date, noting that the Secretary of State has decertified obsolete punch card voting systems (Ibid).

Therefore, in this instance the intent of the voters should be read into the limitation contained in Section 19234 (c) (3) of the Elections Code (*People v. King* (1993) 5 Cal.4th 59, 69). In its clearest application, paragraph (3) prohibits a county from purchasing a voting system with Proposition 41 funds, subsequently disbanding that system, and submitting a second application for funds to purchase a voting system that utilizes different technology. For instance, if a county submits an application to purchase DRE machines to be placed in polling places throughout the county, decides to abandon that system, and submits a second application for optical scan equipment, this clearly violates the provisions of paragraph (3) as the county previously requested fund money for the purchase of a DRE system.

However, this is not to say that equipment purchased with Proposition 41 funds may never be replaced with equipment subsequently purchased with Proposition 41 funds. For example, in the rapidly changing marketplace of voting system technology, a voting system that was purchased with Proposition 41 funds may, after a period of time, be decertified by the Secretary of State. In this case, considering the intent of the voters in passing Proposition 41 to assist counties with the purchase of certified voting equipment, a county that purchases that equipment with the blessing of that certification should be permitted to apply for funds for its replacement if the Secretary of State decertifies the system for use in the state. In doing so, the Secretary would necessarily determine that the system is defective or obsolete. In this instance, the intention of the voters to replace defective or obsolete voting systems should prevail.

Thus, in the endeavor of considering subsequent or “Phase 2” applications for Proposition 41 funds, the Board should broadly interpret the limitation contained in Section 19234 (c) (3) of the Elections Code to effectuate the intent of the voters to update voting systems in the state with modern systems that are certified by the Secretary of State. The Board also possesses broad authority “to reject any application for fund money it deems in appropriate, excessive, or that does not comply with the intent of [Proposition 41]. (Sec. 19235). Therefore, the board should consider whether funding a subsequent or “Phase 2” application is consistent with the intent of the voters in regard to any replacement of voting equipment purchased with Proposition 41 funds from a prior application.