

No. 68402

637

OPINION - POWER OF THE VOTING MACHINE
BOARD TO USE LOAN FUNDS TO PROVIDE
A STORAGE PLACE FOR VOTING MACHINES

MR. EVANS

COPY

CITY SOLICITOR'S OFFICE

January 19, 1936.

Hon. Howard W. Jackson,
Mayor,
City Hall,
Baltimore, Maryland.

Dear Mr. Mayor:

I think the following procedure for the acquisition of a place to store the voting machines recently acquired is justified by law:

It is the function and duty of the Supervisors of Election to select suitable premises for the storage of such machines. When they have done so, they may call upon the Voting Machine Board to purchase or rent the place selected by them.

Provision for the storage of the machines is so closely related to the purchase and acquisition of the machines as to come within the necessarily implied powers of the Voting Machine Board.

The Board can thus issue its requisition upon the City for the cost of acquiring the necessary storage facility, and, after audit by the Comptroller, such requisition will be payable out of the Voting Machine Loan Fund.

Very truly yours,

City Solicitor.

RELM-H



DEPARTMENT OF LAW

217 COURT HOUSE

BALTIMORE, MARYLAND

R. E. LEE MARSHALL
CITY SOLICITOR

January 19, 1938

R. E. Lee Marshall, Esq.
City Solicitor

Dear Mr. Marshall:

Since writing my letter of October 8, 1937, with reference to the authority of the Voting Machine Board to purchase a building in which to store the voting machines, I have given further consideration to the matter.

Section 224A of Article 33 (as re-enacted by Chapter 94 of the Acts of 1937) authorizes the Voting Machine Board to purchase a sufficient number of voting machines for use at all elections after January 1, 1938. The Act provides that -

"The expense incurred by said Board and the cost of such voting machines shall, upon the requisition of said Board, be audited by the Comptroller of Baltimore City, who shall pay the same by warrant drawn upon the proper officers of said City."

In order to properly secure and protect the City's large investment in the voting machines, it is essential that a proper place of storage be provided. The necessity for storage facilities is so closely related to the acquisition of the voting machines as to constitute the cost of storage facilities an expense incidental to their purchase. Under the provisions of Section 224A of Article 33, the Board is specifically authorized to incur expenses in connection with and incidental to the purchase of the machines. The contract between the Voting Machine Board and the Automatic Voting Machine Corporation contemplates the inspection of the 910 machines before acceptance. Such inspection could only take place after the machines have been placed in some warehouse or building. Furthermore, the Automatic Voting Machine Company is under contract with the Voting Machine Board to keep the machines in repair for a period of five years provided they are "properly cared for and provided further that said repairs, renewals and/or replacements are not made necessary by the action of the elements, fire, accident or malicious destruction". This obligation to repair, which runs not

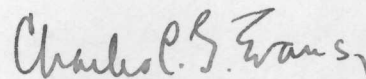
R. E. Lee Marshall, Esq., City Solicitor - #2

to the City or the Supervisors of Election but to the Voting Machine Board, could only be enforced by the Voting Machine Board if the machines are properly cared for and protected so as not to unduly and unnecessarily increase the burden of repairing.

In order to keep this repair obligation alive the Voting Machine Board should furnish storage facilities. It therefore appears that the cost of a building for storage is a proper expense to be incurred by the Voting Machine Board.

Under the provisions of Section 224-P(d) and 224-T the Board of Supervisors of Election is authorized to designate the place of storage. When the Board of Supervisors have designated such a place they may then call upon the Voting Machine Board to exercise its authority and to purchase or rent such place.

Very truly yours,



CHARLES C.G. EVANS
Deputy City Solicitor

CCGE/RRS

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CITY SOLICITOR'S OFFICE

January 19, 1938

R. E. Lee Marshall, Esq.
City Solicitor

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"The expense incurred by said Board and the cost of such voting machines shall, upon the requisition of said Board, be audited by the Comptroller of Baltimore City, who shall pay the same by warrant drawn upon the proper officers of said City."

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Very truly yours,

CCGE/RRS

CHARLES C.G. EVANS
Deputy City Solicitor

COPY

CITY SOLICITOR'S OFFICE

OPINION IN REGARD TO STORAGE OF
VOTING MACHINES.

COPY

CITY SOLICITOR'S OFFICE

October 8, 1937.

Hon. Howard W. Jackson,
Mayor,
City Hall,
Baltimore, Maryland.

Dear Mr. Mayor:

On October 1, 1937, the Voting Machine Board passed a resolution requesting the City Solicitor "to give the Board a legal opinion as to whether or not it has a right to provide a (storage) building out of the bond issue which provides for the purchase of voting machines".

Upon looking up this question, I find:

(1) The Loan Ordinance (No. 396, approved April 13, 1937) provides "that the proceeds of the loan hereby authorized shall be used for the sole purpose of meeting requisitions of said Board (Voting Machine Board)".

(2) The Voting Machine Board has no authority, express or implied, to purchase or rent a building for storing the voting machines purchased by it.

(3) Custody and storage of the machines is expressly provided in the Voting Machine Act itself, as follows:

Section 224-P - "(d) As soon as possible after the completion of the count, the Board of Supervisors of Election shall have the voting machines properly boxed or securely covered and removed to a place of storage to be designated by said Board."

Section 224-T - "(a) The Board of Supervisors

of Election shall designate a person or persons who shall have the custody of the voting machines of the City, and the keys therefor, when the machines are not in use at an election, and shall provide for his compensation and for the safe storage and care of the machines and keys."

Section 224-T - "(b) All voting machines, when not in use, shall be properly boxed or covered, and stored in a suitable place or places as provided by this Section."

Under the above provisions, therefore, sole authority to provide for the custody and storage of the voting machines, when not in use, is vested in the Board of Supervisors of Election, and they are charged with sole responsibility for their custody, storage and safe-keeping.

It follows, therefore, that the Voting Machine Board, as such, has no power or authority in the premises, and no function to perform; and, accordingly, said Voting Machine Board can not issue a requisition or requisitions upon the City for any item relating to the storage of such machines.

The cost of storage is an expense of the Board of Supervisors of Election, which must be covered by budgetary appropriation in the same manner as the other expenses of the Supervisors.

While the Board of Supervisors of Elections, themselves, have sole authority in the premises, I assume that they will desire to consult with the City authorities concerning arrangements for storage of these machines; but whatever arrangement may be made, the cost and expense incident thereto can not be charged to the Loan Fund, but must be provided

Hon. Howard W. Jackson

-3-

Oct. 8, 1937.

in the annual budget.

Very truly yours,

City Solicitor.

RSLM:H



DEPARTMENT OF LAW

217 COURT HOUSE

BALTIMORE, MARYLAND

R. E. LEE MARSHALL
CITY SOLICITOR

October 8, 1937

R. E. Lee Marshall, Esq.
City Solicitor

Dear Mr. Marshall:

On October 1st, 1937, the Voting Machine Board passed a resolution requesting the City Solicitor "to give the Board a legal opinion as to whether or not it has a right to provide a building out of the bond issue which provides for the purchase of voting machines".

Dr. Flack informs me that at the last session of the Legislature there was introduced in the Legislature a bill authorizing the City to create a bond issue to be used to pay for the voting machines authorized to be purchased but that this bill was never passed. I do not know if the method of raising the money to pay for the voting machines has been decided upon.

I assume that the Voting Machine Board desires to know whether or not it is authorized to purchase a building in which to store the voting machines, and to call upon the City to pay for the same in the same manner in which they are authorized to purchase voting machines and to require the City to pay for them.

In my opinion the Voting Machine Board as such has no authority to purchase a building for the purpose of storing the voting machines. The Voting Machine Act creates the Voting Machine Board and authorizes, empowers and directs it to purchase a sufficient number of voting machines for use in polling places at all primary, general, special and other elections. The expenses incurred by said Board and the cost of such voting machines are, upon the requisition of the Board, to be audited by the Comptroller, who is to pay the same by warrant drawn upon the proper officers of the City. In my opinion, "the expenses incurred by said Board" are confined to the expenses incurred incidental to the purchase of the machines and are limited to such expenses as may be incurred in employing engineers to advise the Board in connection with the purchase.

The Voting Machine Act specifically provides that the voting machines when purchased shall be delivered to the Supervisors of Election, who shall have custody and control of the same for all the uses and purposes of the Act.

I find nothing in the Voting Machine Act which can be construed as a direct authorization or an implied authorization to purchase a building in which to store the machines when purchased. Section 224-P (d) of the Voting Machine Act provides:

"As soon as possible after the completion of the count, the Board of Supervisors of Election shall have the voting machine properly boxed or securely covered and removed to a place of storage to be designated by said Board."

Section 224-T of the same Act provides:

"(a) The Board of Supervisors of Election shall designate a person or persons who shall have the custody of the voting machines of the City, and the keys therefor, when the machines are not in use at an election, and shall provide for his compensation and for the safe storage and care of the machines and keys.

(b) All voting machines, when not in use, shall be properly boxed or covered, and stored in a suitable place or places as provided by this Section."

I am of the opinion that the above sections vest in the Board of Supervisors the authority to decide where the machines shall be stored, as well as the authority to provide for the storage of the machines. It is my opinion that the Board of Supervisors should include in their budget a proper allowance for the leasing of a building in which to store the machines or that the City should make available to the Board of Supervisors of Election a building in which to store the machines. If the City

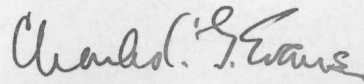
R. E. Lee Marshall, Esq., City Solicitor - #3

should decide to purchase a building for this purpose, it, of course, should only do so in cooperation with the Board of Supervisors of Election, since the Board of Supervisors of Election have the authority to decide where the machines will be stored.

Should the City and the Board of Supervisors agree upon a building, Section 6 of Article 33 of the Code, as repealed and re-enacted by Chapter 94 of the Acts of 1937, appears to be ample authority for the use of public buildings by the Election Supervisors. This Section provides as follows:

"6. Each Board of Supervisors shall have an office and shall provide all necessary ballot-boxes and ballots, voting machines and ballot-labels, and all registry books, registry cards, poll books, tally sheets, blanks and stationery of every description, with printed headings and certificates, and all other equipment necessary and proper for the registry of voters and conduct of elections and for every incidental purpose connected therewith; and the expense thereof shall be paid by the County or by the Mayor and City Council of Baltimore, as the case may be, as above provided. It shall be the duty of the County Commissioners of the several counties and of the Mayor and City Council of the City of Baltimore to allow the reasonable use of the public buildings in their respective counties and in said city by the Election Supervisors thereof, and to light and heat the same for such use, and in all proper ways to facilitate them in the discharge of their duties as such Supervisors."

Very truly yours,



CHARLES C. G. EVANS
Deputy City Solicitor

CCGE/RRS

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CITY SOLICITOR'S OFFICE

October 8, 1937

R. E. Lee Marshall, Esq.
City Solicitor

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Section 224-F of the same Act provides:

"(a) The Board of Supervisors of Election shall designate a person or persons who shall have the custody of the voting machines of the City, and the keys therefor, when the machines are not in use at an election, and shall provide for his compensation and for the safe storage and care of the machines and keys.

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Very truly yours,

CCGE/RRS

CHARLES C. G. EVANS
Deputy City Solicitor

COPY

CITY SOLICITOR'S OFFICE

October 6, 1937

R. E. Lee Marshall, Esq.
City Solicitor

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Very truly yours,

CHARLES C. G. EVANS
Deputy City Solicitor

CCGE/ERS

Mr. Evans

Re: Right of the City to provide a building out
of the bond issue for purchase of voting machines.

Oct. 4/37

Mr. Marshall:

Whom do you want this question referred to?

L.W.H.

MINUTES OF THE MEETING OF THE BOARD CONSTITUTED AND CREATED BY CHAPTER 94 OF THE LAWS OF MARYLAND OF 1937, CONSISTING OF THE MEMBERS FOR THE TIME BEING OF THE BOARD OF ESTIMATES OF BALTIMORE CITY AND THE MEMBERS FOR THE TIME BEING OF THE BOARD OF SUPERVISORS OF ELECTIONS OF BALTIMORE CITY, HEREAFTER REFERRED TO AS THE "VOTING MACHINE BOARD."

October 1, 1937.

The above-mentioned Board met pursuant to the call of the Mayor of Baltimore City, Chairman of said Board, at the office of the Mayor of Baltimore.

There were present: Messrs. Jackson, Chairman; Sellmayer; Graham; Marshall and Crozier; constituting the Board of Estimates; and Messrs. Eberman; McClean, Secretary; and Chambers; constituting the Board of Supervisors of Elections.

The Mayor stated that he had called this meeting mindful of the fact that he does not think there is anything the Board can do definitely in respect to making arrangements for the housing of the voting machines to be purchased until after the courts have acted and rendered their decision concerning the purchase, and he expressed the opinion that the matter may be taken to the Court of Appeals whatever happens. However, he does not think that the Board should wait for the courts' decision before discussing the subject. Mr. Joseph S. Wernig has informed him that he would like the Board to consider his property at 7 N. Frederick st. Mr. Samuel H. Hoffberger has offered his property at 301-7 N. Front st. The agency of the Maryland Color Printing Company has offered certain floors of the property at Holliday and Hillen sts., which is a concrete building. The Mayor assumes that this matter will be the responsibility of the Voting Machine Board, and that the City Solicitor will desire to submit a recommendation regarding the funds for the purpose. The Mayor suggested that these propositions which are before

10/1/37.

the Board be submitted to the Committee as a whole, if a Committee is appointed, or to a Committee of one, each member of the Board being a Committee of one to visit these properties. He stated that he was informed that the best building to house machines of this kind is located in Newark, N. J., and asked whether this is correct.

Mr. Eierman replied in the affirmative.

The Mayor expressed the opinion that the Board should consider the matter and visit the properties, and perhaps visit Newark, as soon as possible.

Mr. Eierman cited the following offers of property received by the Board of Supervisors of Elections:-

Key Realty Co., property at 1214 E. Pratt st.,
Terminal Warehouse Co., three warehouses in this City,
J. Purdon Wright, property at 302 S. Central ave.

Mr. Crozier suggested a piece of property owned by the City on Calverton road.

The Mayor asked whether approximately 35,000 square feet of space would be needed.

Mr. Eierman replied that at least 35,000, perhaps 40,000 square feet, would be required.

Mr. Chambers suggested the old Health Department quarters on St. Paul st.

The Mayor stated that the St. Paul st. property is being used in its entirety, and that the City is expending money to give the occupants additional facilities.

Mr. Chambers suggested that the St. Paul st. property be torn down and a suitable building be erected there to house the voting machines.

Mr. Eierman stated that the St. Paul st. property would be ideally located for the purpose in question.

10/1/37.

The Mayor stated that he would like to see the Board appoint a Committee, the latter to report back to the full Board.

Mr. Sellmayer stated that the Board, apparently, has some offers for available building sites, but he added that there might be more of these available if the public knew that the City contemplated this purchase. He suggested that advertisements for property be inserted in the newspapers, in order to enable persons to submit offers of sites which may be even better than those so far offered.

The Mayor stated that, if a Committee is appointed, he will be willing to see the Board authorize said Committee to advertise for offers for property if it sees fit to do so.

Mr. Elemen stated that he has heard that the warehouse in Newark, N. J., is the best set-up, and that he thinks it will be well to look over the Newark situation before anything is done.

Mr. Chambers suggested the appointment of a Committee of three to look into the matter and report to the Board.

Messrs. Elemen and McClean suggested a Committee of five, being of the opinion that the three members of the Board of Supervisors of Elections should be included therein.

The Mayor stated that he is not opposed to five members, but that, in his opinion, three is sufficient, as the Committee will not buy the building, but only report to the Board as a whole.

The members of the Board of Supervisors of Elections then expressed their approval of the appointment of a Committee of three.

Mr. Sellmayer asked whether the motion will be contingent on the ruling of the City Solicitor,

10/1/37.

In reply, the Mayor expressed the opinion that this item should be included in the motion, adding that the City Solicitor will probably advise the Board whether it has a right to purchase a building and use the money from the Loan in the event that it does not rent a building.

On motion of Mr. Chambers, seconded by Mr. McClean, the Board unanimously authorized the Chairman to appoint a Committee of three, to consider the offers of properties that have been submitted for the housing of voting machines, and any other properties that they feel they should consider, whether owned by the City at this time or not; that they be authorized to advertise if, in their judgment, they should advertise for public offers of properties that might be available other than those that have been offered; that the City Solicitor be requested to give the Board a legal opinion as to whether or not it has a right to provide a building out of the bond issue which provides for the purchase of voting machines; and that the Committee be authorized if, in their judgment, they should do so, to visit Newark, N. J., where there is a modern building for housing voting machines.

The Chairman then appointed a Committee of three consisting of Mr. Bierman, President of the Board of Supervisors of Elections, Chairman; Mr. Marshall, City Solicitor of Baltimore; and Mr. Crozier, Chief Engineer of Baltimore. A vote was taken, and all of the members of the Voting Machine Board voted "aye."

There being no further business before the Board, upon motion duly seconded and carried, the meeting adjourned, subject to the call of the Chair.

S E C R E T A R Y .

COPY
MAYOR'S OFFICE
BALTIMORE

September 28, 1937

Mr. J. George Eierman, President
Board of Supervisors of Elections
Court House, Baltimore, Md.

Dear Mr. Eierman:

I am calling a meeting of the Voting Machine Board for Friday, October 1st at 12 noon in this office to consider proposition by Mr. Samuel H. Hoffberger, 215 N. Calvert Street, as per his letter of September 27th and plat attached hereto, to purchase property 301-17 N. Front Street, for housing voting machines together with other properties which have been offered for this purpose, not with the view to making a decision but of studying the matter so that we will be prepared to take it up just as soon as the case has been settled in the Court.

Very truly yours,

Mayor.

msb

CC- Mr. Walter A. McClean
Mr. Daniel B. Chambers
Mr. George Sellmayer
Mr. B. L. Crozier
✓ Mr. R. E. Lee Marshall
Mr. R. Walter Graham

On the afternoon of March 10, 1938, Mr. B. L. Crozier, Chief Engineer, informed Mr. A. L. Dell, Deputy Comptroller, that plans and specifications for the proposed building to house the voting machines were completed and had been signed by Mayor Jackson, Chairman of the Voting Machine Board, Mr. J. George Nieman and himself; and he requested Mr. Dell to communicate by telephone with the following members of the Board in order to obtain their assent for the approval of these plans and specifications, which would enable him to proceed immediately with the necessary advertising for bids:-

- Mr. George Sellmayer,
- Mr. R. Walter Graham,
- Mr. R. E. Lee Marshall,
- Mr. Daniel Chambers,
- Mr. Walter A. McClean.

Mr. Dell advised that he had called the above-mentioned members, all of whom gave their approval to Mr. Crozier's request with the exception of Mr. Sellmayer, who stated that he could not give his assent until he had gone over the specifications.

SECRETARY.

DANIEL B. CHAMBERS
DANIEL B. CHAMBERS, JR.

LAW OFFICES
DANIEL B. CHAMBERS & SON
CENTRAL SAVINGS BANK BUILDING
CHARLES AND LEXINGTON STREETS
BALTIMORE

TELEPHONE:
PLAZA 1550

June 1st. 1938.

Mr. Charles C. G. Evans,
City Solicitor,
Court House,
Baltimore, Md.

Dear Mr. Evans:-

During my short service on the Voting Machine Board and in the Supervisors' Office and the knowledge I have acquired in the operation of the voting machines, I have become intensely interested in the further necessity of teaching the voting public how to operate these machines.

There is a timidity and dread among our voters that they will not be able to operate these machines and express their preference on this new device in the coming primary and election despite the fact that we have and are now making demonstrations in clubs and elsewhere in the City, it is next to impossible through our present activities to reach the great mass of voters and properly instruct them as so many of them do not attend clubs nor will make long trips to become acquainted with the machines, so I have evolved this plan: *query?* Let the Voting Machine Board (which it has the power to do) either buy or rent an automobile trailer which is equipped with its own electric power plant and a public address system and made a demonstration car out of this and have it towed around to the carnivals, church festivals and wherever large crowds gather and by this method we can teach and instruct voters that we would not otherwise be able to contact by our present set up.

LAW OFFICES

DANIEL B. CHAMBERS & SON

CENTRAL SAVINGS BANK BUILDING

CHARLES AND LEXINGTON STREETS

BALTIMORE

TELEPHONE:

PLAZA 1550

DANIEL B. CHAMBERS

DANIEL B. CHAMBERS, JR.

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These voting machines at present are locked up in the warehouse and so many of our voters will get their first look at them on the primary election day unless we adopt some further teaching plan that is now in vogue.

I have made some preliminary investigation as to the feasibility of this plan and I have had the bearer of this letter, John W. Stancill, who is thoroughly equipped in the operation of these machines to make an exhaustive investigation into the adaptability of these trailers and the practice on one of them would perhaps be of great help and value to the voters of this City. I have asked Mr. Stancill to be good enough to come down and talk the matter over with you at your leisure.

My plan is to take the machine to the voters as far as possible.

Thanking you for your consideration, I am,

Yours very truly,

DBC/M

Daniel B. Chambers

A similar letter has been sent to:

Hon. Howard W. Jackson, Mayor of Baltimore, City Hall, Balto. Md.
Hon. Walter R. Graham, Comptroller, City Hall, Balto. Md.
Mr. George J. Sellmayer, President City Council, City Hall, Balto. Md.
Mr. Bernard J. Crozier, Chief Engineer, Dept. of Public Works, City Hall,
Balto. Md.
Mr. J. George Eierman, President Supervisors of Election, Court House,
Balto. Md.
Mr. Walter A. McClean, Supervisors of Election, Court House, Balto. Md.