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agenda item #14

TROY WALL ASSOCIATES
ATTORNEYS & COUNSELLORS AT LAW
A Professional Association of Individual Practitioners *

Memo

To: Janice O'Connell, Clerk, Assembly of Delegates

From: Robert S. Troy, County Counsel

Date: March 18, 2019

Re: Electronic Voting

This will respond to your request for my Opinion as County Counsel as to whether the Assembly of Delegates may lawfully utilize a mechanism of electronic voting that its new meeting space offers. Inasmuch as I do not have any documentation explaining how the electronic voting system works, I must limit my response to provisions of the Charter and the Manual of Governance that can inform the Speaker, Assembly Members and the Clerk about issues that relate to this question. Several preliminary issues should be noted.

First, the Assembly of Delegates does not always "act" in a consistent fashion. On some matters, the Assembly votes by an affirmative vote of delegates representing a majority of towns (See Section 2-2 (a) of the Charter) while, on most issues, the Assembly acts by a "weighted vote." (See Section 2-5 (b) of the Charter). Utilization of the technology would have to accommodate the Assembly's ability to select the appropriate methodology.

Second, Section 2-5 (b) of the Charter provides that all votes of the Assembly shall be taken by a roll-call vote if requested by any Delegate. As a result, any time after a Motion is made - but prior to a vote - the Assembly may be required to take a roll-call vote if any one of its Members requests it. Consequently, the Charter's provisions suggest that utilization of the technology would be subject to chance and dependent on the wishes of the Assembly Members on each Motion that comes before the meeting.

Third, there are some votes that the Charter requires be taken by a roll-call vote. For example, Section 3-8 of the Charter requires that the Assembly vote by roll-call when the Regional Commissioners veto a measure passed by the Assembly. See Section 3-8 of the Charter.

Fourth, the County has adopted a policy permitting participation from a remote location consistent with statutory standards. It appears that a Delegate that elects to utilize this policy to participate could not vote electronically.

The Manual of Governance includes additional provisions that must be analyzed to judge whether the technology of electronic voting is appropriate for the Assembly.

Section 7(c) of the Manual of Governance echoes the requirement of the Charter for a roll-call vote when requested by any Delegate but adds additional language requiring that every Delegate present at a session of the Assembly must vote, "yes," "no" or "present." This Section also provides that prior to an announcement of the result of a roll-call vote, any Delegate may request that his or her name be "called again in order to record" that Delegate's vote differently.

Section 7(d) of the Manual of Governance also requires that when the Assembly of Delegates votes by roll-call, "the order of calling the roll of Delegates for voting shall be alphabetical."

Finally, reference should be made to Exhibit D of Appendix 1 of the Manual of Governance that includes a "Form of Tally for Roll-Call Vote" that includes categories of "present"; "absent" "yes" and "no" and whether the voting is by weighted vote.

Section 2-2 (b) of the Charter grants to the Speaker and to the Deputy Speaker (Section 2-2 (c)) the authority to "regulate the proceedings" of the Assembly of Delegates "and decide all questions of order." In my Opinion, the Charter empowers the Speaker to decide and determine the methodology that the Assembly of Delegates utilizes to take its votes under the Speaker's authority to "regulate the proceedings" of the Assembly.

RST:geo