

The Virgin Islands Consortium

All Decisions Made By Former Boards Of Elections After August 1, 2017 Are Null And Void, Attorney General Opines

VIC News / **Published On June 12, 2018 09:53 AM /**

Ernice Gilbert **June 12, 2018**



Attorney General Claude Walker issued an opinion on Monday stating that all actions taken by the former Boards of Elections from August 1, 2017, are null and void, and that the new, single board should revisit all these actions and determine whether to reestablish or revoke them with new votes.

Mr. Walker's opinion came after Board of Elections Minority Leader Jevon Williams requested an emergency legal opinion ahead of the single board's first meeting today. But the attorney general's position isn't new. In the Superior Court's [May 10](#)

[judgement](#), Judge Denise M. Francois ruled that all meetings held by the boards after August 1, 2017, were in contravention of the law, and actions taken by the boards after the aforementioned date are void.

Mr. Walker's opinion on Monday stayed in line with the May 10 ruling: 'The newly-formed single Board of Elections must revisit each item that was decided upon by the district boards subsequent to August 1, 2017,' Mr. Walker wrote in his legal opinion. "The board may vote against past actions, it may ratify past actions, but it must affirmatively revisit each and every decision that was made."

Mr. Williams intends to follow Mr. Walker's opinion during today's meeting. "I am grateful for Attorney General Walker's legal opinion as it affirms the need for all members of the Board of Elections to come together, roll up their sleeves and get to work on the people's business," he said, according to a release issued Monday. "Members must elect board officers, decide all previous business handled by the defunct boards, and work to regain the public trust that is essential when you are charged with overseeing and protecting the citizenry's most important right — the right to vote."

Members of the former Joint Boards of Elections had challenged the Superior Court's ruling, only to see their challenge fail when the Supreme Court upheld the Superior Court's judgement.

The V.I. Department of Justice, led by Mr. Walker, had filed suit against the Boards of Elections, alleging that the boards had failed to follow the 2016 law that created the single, territorial board.

Following the [Supreme Court's ruling last week](#), Mr. Walker said, "Once again, democracy has won, and I am insisting that the board complies with the rule of law. The people want a single board with a single set of electoral rules for Virgin Islands, thereby, reducing the likelihood of irregularities and misconduct."

In their appeal to the Supreme Court, members of the two boards of elections maintained during arguments that the Superior Court erred when it held that the Legislature could legally enact Act Nos. 7892 and 7982 to establish a single board of elections. Specifically, the members pointed to section 6(c) of the Revised Organic Act, which provides, in full, as follows:

"All officers and employees charged with the duty of directing the administration of the electoral system of the Virgin Islands and its representative districts shall be appointed in such manner as the legislature may by law direct: Provided, however, that members of boards of elections, which entities of government have been duly organized and established by the government of the Virgin Islands, shall be popularly elected"

According to the Supreme Court opinion, seen [here](#), although the first clause of section 6(c) unambiguously vests the Legislature with the authority to determine how those "charged with the duty of directing the administration of the electoral system shall be appointed," board members maintained that the presence of the phrase "boards of elections" in the second clause reflects an intent by Congress to prohibit the Legislature from establishing a single board of elections.

In response to this line of thought, the Supreme Court said that while the Revised Organic Act does “serve as a de facto constitution for the Virgin Islands,” (see *Fawkes v. Sarauw*, 66 V.I. 237, 247 (V.I. 2017)), it is simultaneously a federal statute adopted by Congress. Therefore, to determine what Congress meant when it included the phrase “boards of elections” in section 6(c), “the appropriate inquiry is to apply the rules of statutory construction to determine what Congress intended at the time it enacted this provision.” The Supreme Court cited *Bryan v. Fawkes*, 61 V.I. 201, 230-31 (V.I. 2014) as guidance.

“Importantly,” the Supreme Court went on, “as the government correctly emphasized in its brief, Congress has expressly instructed that “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise words importing the plural include the singular.”

And while members of the boards argued that the Superior Court lacked the authority to grant the government’s request for declaratory judgment, the Supreme Court said the Virgin Islands declaratory judgment statute does not contain such a limitation. “In fact it expressly provides that “[a]ny person whose rights, status or other legal relations are affected by a statute, may have determined any question of construction or validity arising under the statute, and obtain a declaration of rights, status or other legal relations thereunder,” the territory’s highest court opined.

In conclusion, the Supreme Court said, “Act Nos. 7892 and 7982 are not inconsistent with section 6(c) of the Revised Organic Act, since Congress has directed that plural words in federal statutes also include the singular unless context requires otherwise. Moreover, Act No. 7982 cannot be reasonably interpreted to allow the St. Croix Board of Elections and St. Thomas-St. John Board of Elections to continue to co-exist along with the new single board of elections. And because the government requested the Superior Court to determine the status of the district boards and the validity of the actions taken by them after August 1, 2017, the question was a proper one for a declaratory judgment. Accordingly, we affirm the Superior Court’s May 10, 2018 judgment.”

The single board law [came through legislation sponsored by then-Senator Kenneth Gittens](#), member of the 31st Legislature.

“The bill unifies the boards into one 14-member board while I have issued a charge to my colleagues to bring an amendment post haste that would change the numerical makeup of the board,” Mr. Gittens said during a hearing in 2016. “Some of my colleagues are concerned about the number of members on the board, saying that 14 members would cause a problem in the event of a tie vote, so as soon as an amendment comes that addresses that or one that just reduces the number for the sake of futility, we will take action.”

The measure eventually passed and was signed into law by Governor Kenneth Mapp, becoming Act 7892, but it was found to be flawed when Senator Kevin Rodriguez was disqualified following a protracted residency battle — leaving no elections authority to oversee the process of the April 1, 2017 special election — where Senator Janelle Sarauw became the victor.

In light of this, 32nd Legislature lawmakers passed Act 7982, which gave the disbanded district boards jurisdiction until August 1, 2017 to oversee the special election. Thereafter, the separate boards were to be disbanded to form a single, territory-wide board.

But the territorial board, according to the government, has refused to adhere to the law by failing to meet as a single board.

“While both district boards have convened as the Joint Board of Elections, the members have not to date convened as a “single” Board of Elections,” read the government’s original complaint. “In contravention of Virgin Islands law, defendants continue to meet within their district and address matters concerning the election system and upcoming elections which legally are within the exclusive purview of the “single” Board of Elections.”

“The Government of the Virgin Islands is entitled to a declaratory judgment adjudging the defendants have acted in contravention of Virgin Islands law by conducting district boards meetings after August 1, 2017,” the complaint further stated. “The Government of the Virgin Islands is entitled to a declaratory judgment nullifying all decisions made by district boards after August 1, 2017.

“Since March 2017, the board members knew or should have known that Act No. 7892 created a single Board and that a Chair and Vice Chair need to be elected to conduct the business of the Election System. Notice and knowledge of Defendants members is evidenced by the agenda of the August 2017 and February 2018 joint board meetings where the single board is reflected as an agenda item.

“Defendants had notice and several opportunities to comply. Defendants chose instead to conduct meetings contrary to law and make decision that are solely within the discretion of the single Board. It is in the public interest and the public good for all concerned herewith to insure that law is upheld and board members be required to follow the strictures of Act No. 7982”