

00-101

**ELECTIONS: FEDERAL, COMMONWEALTH AND LOCAL OFFICERS –
VACANCIES IN ELECTED CONSTITUTIONAL AND LOCAL OFFICES -
CONSTITUTIONAL AND LOCAL OFFICERS — THE ELECTION – SPECIAL
ELECTIONS.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND
CITY OFFICERS).**

**Circuit court clerk vacancy is to be filled promptly on Tuesday date that falls within
purview of statutory limitations for holding special elections. November general
election day is among dates court may consider for holding such election.**

Mr. Patrick J. Morgan
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January 29, 2001

You ask whether a circuit court has the authority to order a special election only in
November to fill a vacancy caused by the retirement of the circuit court clerk.

You relate that a clerk of a county circuit court was elected to office in
November 1999.¹ You also relate that a vacancy in the clerk's office has
arisen due to the retirement of the clerk effective January 1, 2001. You
further relate that the circuit court judge has set a special election in
November 2001 to fill the vacancy. You inquire whether such action falls
within the applicable elections statutes.

A clerk of the circuit court is a constitutional officer,² the election of whom
is governed by the elections statutes applicable to constitutional officers.
Specifically, vacancies in elected constitutional offices are governed by Article 6,
Chapter 2 of Title 24.2, §§ 24.2-225 through 24.2-229 of the *Code of Virginia*,³
and by reference therein, Article 5, Chapter 2 of Title 24.2, §§ 24.2-217 through
24.2-224.⁴

Section 24.2-228.1(A) provides that "[a] vacancy in any elected constitutional office ...
shall be filled by special election." Section 24.2-228.1(A) also provides that, upon
petition to the circuit court by the governing body or upon the court's own motion, "the
court shall promptly issue the writ ordering the election for a date determined pursuant to
§ 24.2-682." Section 24.2-682 establishes the times for holding special elections and
dictates that "[a] special election to fill a vacancy in any constitutional office shall be held
promptly and in accordance with the requirements of subsection (A) [of this statute]." Section
24.2-682(A) provides that such special election "shall be held on a Tuesday," that
it "shall [not] be held within the sixty days prior to a general or primary election" or "on
the same day as a primary election," and that it "may be held on the same day as a general
election."

The Supreme Court of Virginia has stated that, "[w]hile in the
construction of statutes the constant endeavor of the courts is to ascertain

and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity."⁵ The Court has also stated that, "the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."⁶ Statutes should not be construed to frustrate their purpose.⁷ With respect to the statutory provision in issue, § 24.2-228.1(A) mandates that vacancies in elected constitutional offices "shall^[8] be filled by special election" and that the date for such election be determined pursuant to § 24.2-682. Section 24.2-682 mandates that such election "be held promptly"⁹ and in accordance with the requirements set forth in subsection (A) of the statute. Section 24.2-682(A) clearly and unambiguously mandates that the special election "be held on a Tuesday" but not "on the same day as a primary election" or within "sixty days prior to a general or primary election." Finally, § 24.2-682(A) permits, but does not require, the special election to be "held on the same day as a general election."¹⁰

In the instant case, therefore, it is my opinion that the circuit court clerk vacancy is to be filled pursuant to a special election held on a date falling within the purview of § 24.2-682(A). I am of the opinion that, although the statute does not require the special election date to coincide with the November general election day, such day is among those that the court may consider.

¹See § 24.2-217 (requiring voters of counties to elect clerk of county circuit court at "general election in November 1999, and every eight years thereafter").

²See Va. Const. art. VII, § 4 (1971).

³Article 6 governs vacancies in elected constitutional offices.

⁴Article 5 governs the election and terms of constitutional officers.

⁵Watkins v. Hall, 161 Va. 924, 930, 172 S.E. 445, 447 (1934) (quoting Floyd, Trustee v. Harding, 69 Va. (28 Gratt.) 401, 405 (1877)).

⁶Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁷See 1982-1983 Op. Va. Att'y Gen. 309, 311 (stating that illogical result would frustrate purpose of statute).

⁸See 1989 Op. Va. Att'y Gen. 250, 251-52 (noting that use of word "shall" in statute indicates its procedures are intended to be mandatory).

⁹Whether or not the election is held "promptly" is a factual matter dependent on the relevant facts and circumstances, none of which is presented here.

¹⁰Use of the word "may" in § 24.2-682(A) indicates the grant of permissive, not mandatory, authority. See 1998 Op. Va. Att'y Gen. 38, 40.

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