STATE OF FLORIDA
DEPARTMENT OF STATE

JEB BUSH
Governor

SUE M. COBB
Secretary of State

February 2, 2006
Certified Mail Return Receipt

The Honorable Ion V. Sancho
Supervisor of Elections for Leon County
315 South Calhoun Street, Suite 100
Tallahassee, FL 32301

Dear Mr. Sancho:

On January 13, 2006, the Department of State received written notice from you that Leon County failed to comply with the terms of the "Memorandum of Agreement For Receipt And Use Of Voting Systems Assistance Grant" entered between you and the department and executed by you on October 18, 2004 (Attachment "A"). This letter serves as a demand for the immediate return of the Title II HAVA (Help America Vote Act) funds provided to you under the terms of that agreement.

In November 2004, you received $564,421.95 in Title II HAVA funds from the Department pursuant to the agreement to assist you with the purchase of a certified voting system that would meet the federal standards for voting systems accessibility by January 1, 2006, under section 301(a) of Title III of HAVA. This amount was based on a certification that you had provided on August 10, 2004, in which you stated a need for 125 HAVA compliant voting machines to satisfy the federal requirement that there be at least one accessible voting system in each polling place. See Attachment "B."

It is important to note that certified accessible voting system options, the purchase of which would have brought your county into compliance, were available to you well in advance of the deadline set forth in the agreement. For example, by letter dated March 17, 2005, the Division of Elections' Bureau of Voting Systems Certification informed you directly of those options. See Attachment "C."

Under the terms of the agreement, you must return to the Department all the Title II HAVA funds you received due to failure to comply with the accessibility requirements of section 301(a) of Title III by January 1, 2006. Please remit to the Department of State the Title II HAVA funds totaling $564,421.95 no later than Thursday, February 16, 2006, 5 p.m.

We recognize that the consequence of your failure to comply with the terms of the agreement places Leon County in a financial predicament. However, the specific legislative appropriation 2871I of the 2004-05 Appropriations Act (s. 6 of chapter 2004-268, Laws of Florida) upon which

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the agreement was based is unambiguous and does not provide for the funds to be encumbered after January 1, 2006. We will make every effort to seek legislative re-appropriation of these Title II HAVA funds to assist you with the purchase of accessible voting systems in compliance with federal law. However, the Department does not dictate or predict the terms and conditions under which funds may be re-appropriated.

In the interim, please recognize that a failure to have your county's voting system accessible to the disabled if it is used in any federal election held after January 1, 2006, would be in violation of section 301(a) of Title III of HAVA. Under Title IV of HAVA, the Department of Justice is responsible for enforcing HAVA which it may do by seeking declaratory and injunctive relief.

Such a failure to have your county's voting system accessible to the disabled if it is used in any federal election held after July 1, 2005, would also be in violation of section 101.56062, Florida Statutes. The Department of State has new authority pursuant to section 97.012(14), Florida Statutes (effective January 1, 2006), to enforce compliance by a county supervisor of elections or any official performing duties with respect to chapter 97-102 and chapter 105 of the Florida Election Code or with a rule of the department. Therefore, if Leon County fails to prepare for and meet state accessibility standards for voting systems used in any federal election, the department will have to consider exercising the enforcement authority authorized by section 97.012(14), Florida Statutes. If timely and appropriate actions are taken to ensure procurement of an accessible voting system, poll worker training, and voter education activities, such enforcement action by the State may not be necessary.

Please provide to Dawn K. Roberts, Director of the Division of Elections, by Thursday, February 16, 2006, 5 p.m., a detailed, written plan, including a timeline, of the actions you intend to take to ensure that an accessible voting system will be in place and ready for use in your county's next election for federal office in accordance with the requirements of federal and state law.

Respectfully,

Sue M. Cobb

Secretary of State

Attachments

Cc: Bill Proctor, Chair, Board of County Commissioners
Herbert W.A. Thiele, County Attorney
Dawn K. Roberts, Director, Division of Elections

SMC/mim