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STATE OF ALABAMA

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90-00216

Honorable Perry A. Hand  
Secretary of State  
Office of the Secretary of State  
State of Alabama  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130-7701

Constitution - Constitutional  
Amendments - Elections

Secretary of State not required  
to certify form and content of  
ballot used in local constitu-  
tional amendment election.

Provisions of Code of Alabama  
1975, § 17-17-1, et seq., are  
applicable to local constitu-  
tional amendment elections.

The election in Calhoun County  
was legally held in accordance  
with Amendment No. 425.

Dear Mr. Hand:

This opinion is issued in response to your request for an  
opinion from the Attorney General.

QUESTIONS

1. Can a local jurisdiction have an  
election on a proposed constitutional  
amendment without first having the form  
and content of the ballot certified by  
the Secretary of State?

2. What are the legal consequences of a jurisdiction not providing the results of a constitutional amendment election to the Secretary of State within the time frame required by law? Is the election which was held a legally constituted election?
3. A local constitutional amendment election was held. The state canvassing board (the Secretary of State, Governor and/or Attorney General) did not receive nor did it canvass, tabulate or verify the election results. Is the election which was held a legally constituted election?
4. A local constitutional amendment election was held. The state canvassing board (the Secretary of State, Governor and/or Attorney General) did not announce or proclaim the election results. Is the election that was held a legally constituted election?

#### FACTS AND ANALYSIS

Act No. 89-315, Acts of Alabama, p. 502, proposed an amendment to the Constitution of Alabama to legalize the operation of bingo games for prizes or money by certain nonprofit organizations for charitable or educational purposes in Calhoun County. Section 1 of the Act stated:

"The following amendment to the Constitution of Alabama of 1901 is proposed and shall become valid as a part of the Constitution when all requirements of Amendment 425 of the Constitution of 1901 are fulfilled: . . ." (Emphasis added.)

Amendment No. 425 sets forth the procedures for adopting amendments to the Constitution that affect only one county and states:

"Any proposed constitutional amendment which affects or applies to only one county shall be adopted as a valid part of the

constitution by a majority vote of the people of the county and in any political subdivision thereof so affected, provided that such proposed amendment has first been unanimously approved by at least a three-fifths vote of the elected members of each house and unanimously approved by a local constitutional amendment commission composed of the governor, lieutenant governor, attorney general, secretary of state and speaker of the house of representatives and notice of such election, together with the proposed amendment shall be given by proclamation of the governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in each newspaper qualified to run legal notices in the county affected. The proposed local constitutional amendment shall then be approved by a majority vote of the qualified electors of the county and in any political subdivision thereof affected by such proposed amendment voting in a referendum election held for the purpose of determining if such proposed amendment shall become adopted as a valid part of the Constitution."

According to information obtained by this office, the proposed local constitutional amendment was submitted to the local constitutional amendment commission (Callahan Commission), notice of the election was given by proclamation of the Governor and the proclamation was published according to the requirements of Amendment 425. In addition, the proposed amendment was approved by a majority vote of the qualified electors in Calhoun County. Given these facts, the specific requirements of Amendment 425 have been met. With respect to your first question, while there is no prohibition against the Secretary of State and/or the Governor specifying language to be used on the ballot summarizing each amendment, we know of no statutory or constitutional requirement that the form and content of the ballot for an election on a proposed local constitutional amendment be certified by the Secretary of State. Accordingly, a local election may be held on a proposed constitutional amendment without having the Secretary of State certify the form and content of the ballot.

The remainder of your questions refer to provisions found in Amendment No. 24 and Code of Alabama 1975, § 17-17-1, et seq. Amendment No. 24 specifies the manner in which amendments to the Constitution of Alabama may be proposed and requires an election by the qualified electors of the state, not just the county affected. This office has previously held that the procedure set forth in Amendment 425 for adopting amendments to the Constitution that affect only one county is not the only method that may be used for adopting local constitutional amendments. Opinion to Honorable Bob Kirby, Probate Judge, Randolph County, under date of December 15, 1983. Thus, the Legislature, in passing Act No. 89-315 proposing the local constitutional amendment, could have required that the procedures outlined in Amendment 24 be followed. Instead, the Legislature chose to require that the procedures in Amendment 425 be followed.

We note that Amendment 24, in pertinent part, provides:

"In all elections upon such proposed amendments, the votes cast thereat shall be canvassed, tabulated and returns thereof be made to the secretary of state, and counted, in the same manner as in elections for representatives in the legislature; and if it shall thereupon appear that a majority of the qualified electors who voted at such election upon the proposed amendments voted in favor of the same, such amendments shall be valid to all intents and purposes as parts of this Constitution. The result of such election shall be made known by proclamation of the governor."

Amendment 425 does not contain these requirements nor does it refer back to Amendment 24. Since the Act proposing the local constitutional amendment specifies that the proposed amendment shall be valid when the requirements of Amendment 425 are fulfilled, the provisions of Amendment 24 are not applicable. However, the provisions under the general election laws of the state relating to amendments to the Constitution may be applicable. These provisions are found in Code of Alabama 1975, § 17-17-1, et seq.

Section 17-17-2 states:

"The board of supervisors shall ascertain the number of votes given in their

respective counties for and against the proposed amendment when ascertaining the vote given for officers; the returning officers of such county shall thereupon make returns of such vote, by precincts, to the secretary of state immediately, together with a certificate, prepared from the poll lists of the total number of qualified electors in said county who voted at such election."

Section 17-17-3 states:

"The secretary of state shall, in the presence of the governor and attorney general, or one of them, open such certificates and therefrom ascertain whether a majority of all the qualified electors of the state who voted at such election voted in favor of such amendment or amendments; and the result of said election shall be made known by proclamation of the governor."

The language used in these provisions indicates that they apply to elections held statewide such as that provided for in Amendment 24. However, at the time these provisions were enacted Amendment 425 did not exist and, thus, proposed amendments had to be submitted for a statewide vote. The intent of the Legislature should be ascertained and given effect when construing statutes. The intent may be ascertained from the language used in the statute and from the circumstances that arise. Clark v. Houston County Commission, 507 So.2d 902 (Ala. 1987). Accordingly, it is our opinion that it was the intent of the Legislature that these Code provisions apply to all elections on a proposed constitutional amendment. Given this opinion, the results of the election in Calhoun County should have been provided to the Secretary of State and made known by proclamation of the Governor. Apparently, there is some question as to whether the results were sent to the Secretary of State. It is our opinion that the results should be provided as soon as possible.

Regardless of whether the results were immediately provided, the election was legally held in accordance with the requirements of Amendment 425 and, thus, the results are not invalidated by the lack of timely notice to the Secretary of State and proclamation by the Governor. We also note that with respect to the requirements under Amendment 24, Alabama courts

follow the "substantial compliance doctrine." Edmonson v. Brewer, 282 Ala. 336, 211 So.2d 469 (1968). In other words, if the constitutional and statutory provisions are substantially complied with, then the validity of the proposed amendment is upheld.

CONCLUSION

The Secretary of State is not statutorily or constitutionally required to certify the form and content of the ballot used in an election on a proposed local constitutional amendment.

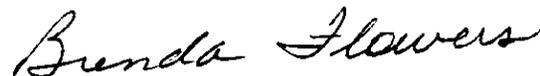
The provisions of Code of Alabama 1975, § 17-17-1, et seq., are applicable to local constitutional amendment elections held under Amendment No. 425. Thus, the results of the election in Calhoun County should be provided to the Secretary of State as soon as possible. Although the results were not immediately provided and have not been proclaimed by the Governor, the election was held in accordance with the requirements of Amendment No. 425 and, thus, the results should not be invalidated.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General

By:



BRENDA FLOWERS  
Assistant Attorney General