

OFFICE OF THE
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STATE OF ALABAMA

APR 24 1990

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Honorable Martha A. Elrod
City Clerk
P. O. Box 267
Gadsden, AL 35999

Municipalities - Municipal
Elections - Candidates -
Elections

City of Gadsden's municipal elections are to be held under the terms of its classification act and the general municipal election laws as they existed prior to the 1987 municipal election law amendments.

Dear Ms. Elrod:

This opinion is issued in response to the request of the City of Gadsden for an opinion of the Attorney General.

QUESTION

Because of the conflicts between Act No. 85-926 and Act No. 87-581, may the city council, pursuant to Section 11-46-72, select any date it chooses to hold the regular municipal election?

FACTS AND ANALYSIS

Code of Alabama 1975, § 11-43B-3 provides for the election of the mayor and councilmembers to be held on the second

Tuesday in July in 1986 and every four years thereafter. The next municipal election will be held in Gadsden the second Tuesday in July of 1990.

Your opinion request presents the following information:

Whereas, Act No. 87-581 amended Sections 11-43-2, 11-46-21, 11-46-22, 11-46-25, 11-46-26 and 11-46-36, Code of Alabama 1975, regarding the dates for holding municipal elections; and

Whereas, Section 2 of Act No. 85-926, now codified as Section 11-43B-2, Code of Alabama 1975 provides that the municipal election will be the second Tuesday in July with a runoff three weeks later; and

Whereas, in an opinion dated April 18, 1988, to Gadsden City Clerk Martha A. Elrod, the Attorney General concluded that the City of Gadsden could not utilize the provisions of Section 11-46-74 to adopt the election dates established by Act No. 87-581; and

Whereas, Section 11-46-22 requires the notice of the election and the opening of qualification for candidacy to be published no earlier than the third Tuesday and no later than the fourth Tuesday in June preceding the election, which is two months before the election date in Section 11-46-21; and

Whereas, Sections 11-46-25(g), 11-46-26 and 11-46-36 close the period of qualification for candidacy and require other actions on the third Tuesday in July, which is five weeks before the election date in Section 11-46-21; and

Whereas, the City cannot hold its election on July 10 and 31, 1990, as required by Section 11-43B-2 and comply with the other dates established by Act No. 87-581, which are June 26 and July 17; . . .

Code of Alabama 1975, § 11-46-74 (Act 87-581) states:

**"§ 11-46-74. Use of election dates
established by classification
act or local act.**

"Any municipality whose election dates have been established by classification act, local act or general act of local application may continue to use said election dates unless a majority of the members of the governing body vote to use the election dates established in this article or section 11-43-2. (Acts 1987, No. 87-581, p. 928, § 11.)"

When Section 11-46-74 was enacted (Act No. 87-581), the City of Gadsden's election day was the second Tuesday in July. It's election dates were those set in Code of Alabama 1975, § 11-46-20, et seq. Since Gadsden could not and did not vote to use the new election dates set forth in Code of Alabama 1975, § 11-43-2 or Article 2 of Chapter 46 of Title 11, as amended in 1987, then under Section 11-46-74, the City of Gadsden may continue to use the election dates which were established by the classification act. Thus, Gadsden's municipal election is to be held under the same timetable used in the 1986 election. Stated differently, the municipal election dates which are to be used are those which were set forth in the municipal elections portion of the Code of Alabama 1975, prior to the 1987 amendments.

While it is the opinion of this office that the conclusion reached is the correct one, we are very much aware that an election is a very important matter. Because opinions are advisory in nature, this office urges you to file an appropriate action, perhaps a declaratory judgment, in a court of competent jurisdiction.

CONCLUSION

It is the opinion of this office that the City of Gadsden's municipal elections are to be held under the terms of its classification act and the general municipal election laws as they existed prior to the 1987 municipal election law amendments.

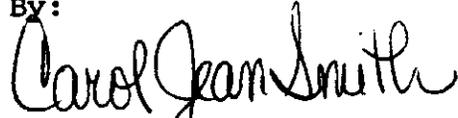
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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General

By:



CAROL JEAN SMITH
Assistant Attorney General

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