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OFFICE OF THE ATTORNEY GENERAL



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Honorable Rebecca N. Dill
Chairman
Gadsden Civil Service Board
326 Bellevue Drive
Gadsden, Alabama 35901

Municipalities - Civil Service
System - Police Officers -
Municipal Employees

City governing body was
authorized to create a
personnel board to interview
fire department applicants
pursuant to a federal court
consent decree, but this
authority did not extend to a
board to interview police
department applicants.

Dear Ms. Dill:

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

QUESTIONS 1 and 2

Your questions are:

1. What authority, respectively, do the governing body (formerly the Commission, now the Council) and the Civil Service Board of the City of Gadsden have over employment procedures for the Gadsden Police and Fire Departments?

2. Did the former City Commission have the authority to create the Police Department Personnel Board to interview applicants for employment by that department, and did the Commission have authority to implement the Consent Decree cited above by creating the Fire Department Personnel Board? What is the status of these ordinances?

FACTS AND ANALYSIS

Your request presents the following information about the powers of the Civil Service Board:

The Civil Service Board of the City of Gadsden functions under Alabama Act No. 671 (1951), as amended. That Act includes the following provisions:

Section 2: Police and fire departments under civil service. The police department and the fire department and all officers and members of said departments . . . shall be governed by civil service regulations under the direction and supervision of a board as hereinafter provided. . . .

Section 6: Board to make rules and regulations. The civil service board shall make rules and regulations to carry out the purpose of this act, and for examinations, appointments and removals in accordance with its provisions and the board may, from time to time make changes in the existing rules. . . .

Section 7: Application. All applicants for a place or position on the police force or fire department, as the case may be, shall file their

application in writing with the civil service board, . . . and all applicants must be subject to examination, which shall be public, competitive and open to all citizens of the United States
. . . .

Such examinations shall be practical in their character, and shall relate to those matters which will fairly test the relative capacity of the persons examined to intelligently discharge the duties of the position to which they aspire.

Section 8: Examinations. The board shall control all examinations, and whenever an examination is to take place, shall conduct such examination
. . . .

Your request also presents the following information with regard to a federal court consent decree.

In 1978, the City of Gadsden and the Gadsden Civil Service Board were sued in federal court by and on behalf of black applicants not selected for employment by the Gadsden Fire Department. A consent decree was entered in that case providing for the creation of a personnel board to interview applicants as part of the procedure for employment by the Fire Department. The city commission adopted an ordinance creating the Fire Department Personnel Board in accordance with the consent decree and, at the same time, adopted an ordinance creating a similar board to interview applicants for employment by the Police Department, although that department was not affected by the lawsuit. The Consent Decree (with respect to the fire department) and the ordinances provide that the personnel boards will be appointed by

the City Commission (now Council). All applicants who pass the written examination conducted by the Civil Service Board are interviewed by the appropriate personnel board, and the scores assigned by the boards are added to the scores on the written examinations to obtain total scores which determine the order in which applicants are employed.

A federal court consent decree controls subsequent interpretations of state statutes. It is, therefore, the opinion of this office that until such time as the 1978 consent decree is modified by a federal court there must exist a "personnel board to interview applicants" for employment in the Fire Department. However, it would appear from the specific provisions of the Civil Service Act created above that, absent other authority, such as a federal court consent decree the City Commission was without authority to create a personnel board to interview applicants for the police department.

While being of the opinion that the ordinance establishing a personnel board to interview applicants for employment in the police department is in conflict with applicable state law and, thus invalid, we urge you to be cautious in your approach to this matter.

If the "personnel boards" have been an instrument by which federal lawsuits have been avoided since 1978, we would urge the Civil Service Board to implement a procedure of this type in order to avoid future lawsuits.

CONCLUSION

A personnel interview board for applicants for employment by the Gadsden Fire Department established by city ordinance pursuant to a federal court consent decree is valid. However, an ordinance establishing a personnel board to interview police department applicants conflicts with state law creating the Gadsden Civil Service System and is thus invalid.

If the police applicant personnel board has served to prevent federal lawsuits, regarding the hiring of police

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officers, we urge the Civil Service Board to incorporate something of this nature into its system.

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

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
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