

# OFFICE OF THE ATTORNEY GENERAL 91-00211



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Honorable Samuel Jenkins  
Chairman, Baldwin County Commission  
P.O. Box 1488  
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Health Care - Health Care  
Authorities - Boards of  
Directors - County Commissions

The Eastern Shore Health Care  
Authority cannot submit to the  
Baldwin County Commission the  
same three names for selection  
for each of the three places on  
its board of directors.

Dear Mr. Jenkins:

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

## QUESTION

Does Code of Alabama 1975, § 22-21-352 allow  
the Eastern Shore Health Care Authority to  
submit the same three names for selection by  
the Baldwin County Commission for each of  
the three places on its board of directors?

## FACTS AND ANALYSIS

Health care authorities are established pursuant to Code of  
Alabama 1975, § 22-21-310 through § 22-21-344. Additional  
powers of health care authorities are provided at § 22-21-350,  
et seq.

Section 22-21-352 makes further provision for amendment of certificates of incorporation or reincorporation of such authorities. It states in pertinent part:

"(a) Except as otherwise provided in the last sentence of this subsection, any authority that now exists, or that is hereafter organized or reincorporated (as the case may be) pursuant to the provisions of the enabling statute, shall have the power to amend its certificate of incorporation or certificate of reincorporation, in the manner hereinafter provided, so as to provide:

"(1) That the governing body of an authorizing subdivision empowered (either alone or jointly with the governing body or bodies of one or more other authorizing subdivisions) to elect or appoint one or more directors shall so elect or appoint all or any of such directors only from a list of nominees, as provided in subdivision (2) below, proposed by the board and otherwise qualified, in accordance with law and with the terms of such certificate of incorporation or certificate of reincorporation (as the case may be), or any amendment thereto made pursuant to the provisions of the enabling statute, to serve as a director; and

"(2) That in the case of a vacancy resulting from the expiration of the stated term of office of any such director, the board shall, not more than 90 nor less than 10 days prior to the expiration of such term of office (or in case of a vacancy resulting from the death or resignation of any such director or from a cause other than the expiration of the stated term of office of any such director,

within 30 days following the occurrence of such vacancy):

"a. By resolution duly adopted, propose a list of nominees (not less than three in number) for each place or seat on the board that is or is to become vacant as aforesaid; and

"b. Cause a certified copy of such resolution to be filed with the governing body of the authorizing subdivision or subdivisions empowered to elect or appoint such director."

Thus, if the certificate of incorporation of a health care authority so provides, vacancies on the board of directors of the authority are to be filled by the authorizing subdivision from a list of not less than three nominees submitted by the health care authority to the authorizing subdivision.

When construing a statute, the duty is to ascertain and give effect to the legislative intent expressed in the statute. Tin Man Roofing Company v. Birmingham Board of Education, 536 So.2d 1383 (Ala. 1988). A sensible construction should be given a statute, and the terms used should be given a practical, reasonable and sensible application. Bean Dredging Corporation v. State, 454 So.2d 1009 (Ala.Civ.App. 1984). A sensible, reasonable and practical interpretation of § 22-21-352 regarding the election or appointment of directors is that a list of nominees is presented for each place on the board, and each list is composed of three different names. Such construction would also reflect the legislative intent. Furthermore, if the same three names of nominees were submitted for each of the three positions on the board of directors of the health care authority, the result would be three nominees for the first place on the board, two nominees for the second place and one nominee for the third place. This would contravene the provision of § 22-21-352 requiring three nominees for each place on the board.

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CONCLUSION

The Eastern Shore Health Care Authority cannot submit to the Baldwin County Commission the same three names for selection for each of the three places on its board of directors.

I hope this sufficiently answers your question. 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.  
Chief, Opinions Division

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