

# OFFICE OF THE ATTORNEY GENERAL

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Honorable Wilbur C. Mitchell  
Sheriff, Covington County  
Covington County Courthouse  
Andalusia, AL 36420

Sheriffs - Employees,  
Employers, Employment -  
Political Activity

Deputy sheriff as employee of  
sheriff's office may qualify  
and run for a municipal  
elective office without  
resigning.

Dear Sheriff Mitchell:

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

## QUESTION

May a deputy sheriff run for city  
council?

## FACTS, LAW AND ANALYSIS

In your letter requesting this opinion you state that a  
deputy from your office has qualified to run in a city election  
for city council, and that the local county commission has  
pointed out to the deputy that under the provisions of the  
personnel policies adopted by the county commission she should  
resign or take a leave of absence without pay in order to make  
this race.

Section 17-1-7(a)(2), Code of Alabama 1975, provides as follows:

"No person in the employment of any county, whether classified or unclassified, shall be denied the right to participate in any city and state political activities to the same extent as any other citizen of the state of Alabama, including endorsing candidates and contributing to campaigns of his choosing."

In Kirby v. Mobile County Commission the Court of Civil Appeals, considering this section of the law, observed:

"This section provides that employees of any . . . county shall not be denied the right to participate in political activities to the same extent as any other citizen, except they are prohibited from engaging in political activities involving the same level of government in which they are employed." (Emphasis added.)

Kirby v. Mobile County Commission, 564 So.2d 477 at 479 (Ala. CCA 1990).

We are aware that the Covington County Commission has adopted a Covington County Employee's Handbook in which certain rules and regulations are set forth, including, on page 12 of the handbook, the following:

"No person holding a position in the County Service shall:

"Become a candidate for nomination or election to any public office . . . unless

"a. He or she resigns or requests and receives . . . a leave of absence without pay . . . prior to making formal announcement. . . ."

To the extent that this rule prohibits a county employee's participation in state and municipal elections, it is in derogation of the state law, § 17-1-7 cited above. We note

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that Act No. 819 of the 1978 legislature, included as an appendix to the employee handbook is, in fact, § 17-1-7 of the Code. We are not aware of any statutory provision which authorizes the rule, and it is axiomatic that the county can do only what it is authorized to do, and cannot, by adopting a handbook, act in derogation of the general statutes of the state.

Accordingly, an employee of the sheriff's office, such as a deputy sheriff, may participate in municipal elections, even to the extent of being a candidate for office, and cannot be required to resign or take a leave of absence to do so. Of course, it should be obvious that such a candidate should not campaign while on duty, nor use any of the assets of the position in which she is employed in furtherance of her campaign.

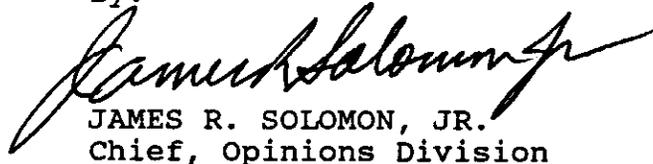
CONCLUSION

A deputy sheriff cannot be required to resign or take a leave of absence to participate in municipal elections, even to the extent of being a candidate for municipal office. Such a candidate should not use the assets of his position of employment in the furtherance of his campaign, nor should such a candidate campaign while on duty.

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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