

OFFICE OF THE ATTORNEY GENERAL



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JAN 03 1994

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Honorable C. A. Naramore
Chairman, Walker County
Civil Service Board
Route 9, Box 59
Jasper, AL 35501

Counties - Civil Service
Board - Employees, Employers,
Employment

A mandamus action may be brought against a hiring authority who violates provisions of Act No. 200 (1969), the Walker County Civil Service Act. The Personnel Board is authorized by Act No. 200 (1969), as amended by Act No. 89-712, to engage legal counsel of its choice to be paid by the county to advise the board.

Dear Mr. Naramore:

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

QUESTION

What is the proper procedure for the Walker County Civil Service Board to follow in enforcing its rules and regulations when a hiring authority's hiring practices circumvent such rules and regulations?

FACTS, LAW AND ANALYSIS

The Walker County Civil Service System is governed by Act No. 200, Acts of Alabama 1969, p. 263, as amended by Act No. 89-712, Acts of Alabama 1989, p. 1422 (Sections 6 and 14).

Section 4 of Act No. 200 (1969) states:

"All employees of the county shall be governed by civil service rules and regulations prescribed in or promulgated pursuant to this Act, administered by a civil service board, the creation of which is provided for in Section 5 hereof."

Section 9 of Act No. 200 (1969) provides regarding the civil service board:

"The Board shall have power to make rules and regulations governing examinations, eligible registers, appointments, transfers, salaries, promotions, demotions, annual and sick leave, and such other matters as may be necessary to accomplish the purposes of this Act. . . .

"The Board shall establish rules and regulations governing dismissals, suspensions, layoffs, terminations, and leaves of absence, and the severance of an employee's relationship with the county shall be in accordance with such regulations."

Section 6 of Act No. 200 (1969), as amended by Act No. 89-712, states in pertinent part:

". . . The board shall have the power to appoint a clerical assistant and engage legal counsel of its own choice, who shall be paid by the county. No clerical assistant shall have any other employment other than with the board."

Thus, the board's authority to make rules and regulations regarding the civil service system is established by the act creating it.

Mandamus proceedings are the appropriate remedy to require a public official to do a ministerial act which he is

legally bound to perform. City of Birmingham v. Personnel Board of Jefferson County, 464 So.2d 100 (Ala.Civ.App. 1984).

We note that according to Section 18 of Act No. 200 (1969), any person who violates any of the provisions of the Act is guilty of a misdemeanor. Section 104(14) of the Constitution of Alabama, 1901 prohibits the enactment of a special, private or local law "fixing the punishment of crime." It is possible that the constitutionality of Act No. 200 (1969) could be challenged on the basis of this provision.

Note that it is provided in Section 6 of Act No. 200 (1969), as amended, and as quoted above, that the Personnel Board shall have power to appoint a clerical assistant and to engage legal counsel of its own choice, who shall be paid by the county.

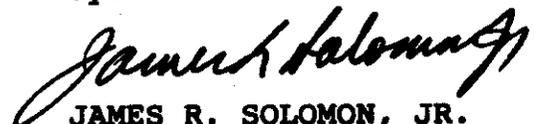
CONCLUSION

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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,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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