

OFFICE OF THE ATTORNEY GENERAL

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April 27, 1995

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Honorable J. C. Miller, Jr.
Executive Director
The Housing Authority of the
City of Montgomery, Inc.
1020 Bell Street
Montgomery, AL 36104-3056

THIS OPINION HAS BEEN OVER-
RULED BY THE OPINION ISSUED
TO HOWARD MANDELL, ATTORNEY
FOR CITY OF MONTGOMERY,
DATED 8-6-2001, A.G. NO.
2001-246.

Housing Authorities - Boards
of Directors - Offices and
Officers

Appointments of Montgomery
Housing Authority Commission-
ers are to be made, under Act
No. 73-618, by the Montgomery
City Council.

Dear Mr. Miller:

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

QUESTION

Now that the Supreme Court of Ala-
bama has held that the Board of Commission-
ers of the Montgomery Housing Authority
should be increased under Act No. 93-704
from five commissioners to nine commission-
ers, we need an answer to the question:
"Should the appointment of the four addi-
tional commissioners and future appoint-
ments of commissioners be by the Mayor (as
provided for by § 24-1-24 of the Code of
Alabama) or by the Montgomery City Council
(as provided for by Act No. 618)?"

FACTS AND ANALYSIS

Act No. 93-704, now Code of Alabama 1975, § 11-40-21, provides that in any Class 3 municipality the number of members who shall serve on any existing or future municipal board, committee, or like body, shall, unless the municipal governing body by a two-thirds vote determines otherwise, be the same as the number of members of the municipal governing body. Section 11-40-21 is silent on the question of who makes such appointments.

We turn then to the provisions of Acts of Alabama, Act No. 73-618, Section 3.07, the "charter" of the City of Montgomery, which, in pertinent part, states:

"Without limitation of the foregoing, the council shall have the power to: . . .

"(e) Appoint the members of all boards, commissions or other bodies authorized hereunder or by law. This provision for appointment of members of boards, commissions or other bodies authorized hereunder or by law shall supersede any different provision for appointment of such members contained in any statute or ordinance in effect at the time of adoption by the city of the mayor-council form of government set up by this act, and shall include power to remove any member of any board, commission or body to the same extent as might be done by the governing body of the city at the time of adoption by the city of the mayor-council form of government set up by this act and to appoint another in his stead. . . ."

Appointments of commissioners for the Housing Authority are authorized by Code of Alabama 1975, § 24-1-24, and such appointments are, therefore, authorized by law and are to be made under Act No. 618. Under the express provisions of Act 73-618, Section 3.07, the provision designating the council as the appointing authority for members of boards, commissions, or other bodies supersedes "any different provision for appointment of such members contained in any statute or ordinance in effect at the time of adoption by the city of

the mayor-council form of government" created in Act No. 73-618. We are unaware of any subsequent amendment to Section 3.07 of Act No. 73-618 which would affect such a conclusion. Moreover, although Code of Alabama 1975, § 24-1-24 was amended in 1981, the amendment did not change the appointing process. Section 24-1-24 is a general statute applicable to the entire state, while Act No. 73-618 is applicable only to a particular locality, viz, the City of Montgomery. In Sand Mountain Bank v. Albertville National Bank, 442 So.2d 13 (Ala. 1983), the Supreme Court of Alabama held:

"If the situation arises, as is alleged here, that provisions of a general law applicable to the entire state are in conflict with provisions of a previously enacted special law applicable only to a particular locality, the general law will not operate to repeal the special law, 'unless repeal is provided for by express words or arises by necessary implication.' Vaughan v. Moore, 379 So.2d 1240, 1241 (Ala. 1980). If under a reasonable construction it is possible to reconcile the acts, both will be given effect. Ex parte Jones, 212 Ala. at 261, 102 So. at 235; Siegelman v. Folmar, 432 So.2d at 1249. As discussed earlier, Act 303 and § 5-2A-7 can be reconciled and a field of operation given to each. The effect of § 5-2A-7 is not the repeal of Act 303." (Emphasis supplied.) 442 So.2d 13 at 19.

The two statutes here under consideration can be reconciled and a field of operation given to both.

It is, therefore, the opinion of this office that appointment of four additional commissioners and future appointments of commissioners of the Montgomery Housing Authority are to be made by the Montgomery City Council under the express provisions of Act No. 73-618.

CONCLUSION

All appointments of Commissioners of the Montgomery Housing Authority are, under the express provisions of Acts

Honorable J. C. Miller, Jr.
Page 4

of Alabama, Act No. 73-618, to be made by the Montgomery City Council.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/CJS/jho
M4.95B/OP