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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Leo M. Bullock, III
Mobile County Constable
Post Office Box 6351
Mobile, Alabama 36660

Constables – Deputies – Service of
Process and Summons – Mobile
County

Because Mobile County had a
population greater than 200,000 on
January 13, 1978, the constable of
Mobile County is allowed by Act
45 (1920) to appoint a deputy
constable for the purpose of
executing civil service of process.

Dear Constable Bullock:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

As an elected constable, do I have the
authority to appoint deputy constables for the
purpose of executing civil process?

FACTS AND ANALYSIS

This Office has previously determined that a constable is allowed to
appoint a deputy constable, for service of civil process, pursuant to Act
45 (1920). Opinion to Honorable Gilbert F. Douglas III, dated March 3,
2003, A.G. No. 2003-088. Act 45 (1920) provides as follows:

That an Act entitled “An Act to regulate
and define the power and jurisdiction of con-
stables in all counties in the State of Alabama

having a population of 200,000 or more, according to the last or any future Federal Census," approved September 17, 1919, be and the same is hereby amended by amending Section 3 of said Act so as to read as follows:

"Section 3. That no constable in such counties shall have the right or authority to appoint a deputy constable, or appoint any person as a deputy constable, except for the purpose of executing civil processes."

1920 Ala. Acts No. 45, 104.

Act 45 (1920) is a general act of local application whose use is limited by section 106.01 of the Constitution of Alabama. Section 106.01 provides as follows:

Any statute that was otherwise valid and constitutional that was enacted before January 13, 1978, by the legislature of this state and was a general act of local application on a population basis, that applied only to a certain county or counties or a municipality or municipalities of this state, shall not be declared invalid or unconstitutional by any court of this state because it was not properly advertised in compliance with section 106 of this Constitution.

All such population based acts shall forever apply only to the county or counties or municipality or municipalities to which they applied on January 13, 1978, and no other, despite changes in population.

The population based acts referred to above shall only be amended by acts which are properly advertised and passed by the legislature in accordance with the provisions of this Constitution.

ALA. CONST. art. IV, § 106.01 (amend. 389) (emphasis added).

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The plain meaning of Act 45 (1920) is that constables in counties with a population of 200,000 or more are allowed to appoint deputy constables for the purpose of executing civil process. *Douglas* at 2. Because Act 45 (1920), however, is a general act of local application on a population basis, enacted before January 13, 1978, section 106.01 restricts application of the act to counties or municipalities to which the act applied on January 13, 1978. The question, then, is whether Act 45 (1920) applies to Mobile County. In other words, did Mobile County have a population of 200,000 or more on January 13, 1978?

According to information provided by the Archives Section of the Probate Court of Mobile County, the population of Mobile County in 1970 was 317,308. In 1980, the population had risen to 364,980. Because Mobile County had a population greater than 200,000 on January 13, 1978, it is the opinion of this Office that Act 45 (1920) applies to Mobile County and the constable there is allowed to appoint a deputy constable for the purpose of executing civil service of process.

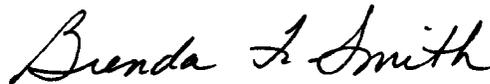
CONCLUSION

Because Mobile County had a population greater than 200,000 on January 13, 1978, the constable of Mobile County is allowed by Act 45 (1920) to appoint a deputy constable for the purpose of executing civil service of process.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Noel S. Barnes of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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