



2009-004

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

October 16, 2008

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TROY KING  
ATTORNEY GENERAL

Honorable Carl Pruett  
Mayor, City of Albertville  
Post Office Box 1248  
Albertville, Alabama 35950

THE *PRUETT* OPINION (A.G. NO. 2009-004) DOES NOT DISCUSS SECTION 11-44G-2 OF THE CODE OF ALABAMA.

BEFORE RELYING ON *PRUETT*, SEE THE OPINION ISSUED TO HONORABLE JAY M. ROSS, ATTORNEY, CITY OF DAPHNE, DATED JANUARY 31, 2013, A.G. NO. 2013-029.

Municipalities – Fair Campaign Practices Act – Elections – Vacancies – Mayors – Marshall County

A vacancy in the office of mayor will occur at the beginning of the next term of office of mayor, the first Monday in November 2008. The vacancy must be filled according to the provisions of section 11-43-42(a) of the Code of Alabama, which is applicable to a city with 12,000 or more in population. The president of the council elected at the organizational meeting of the council will automatically fill the vacancy in the office of mayor.

The candidate for mayor who received a majority of the votes, but who was not issued a certificate of election because he failed to file a report of contributions and expenditures before the date of the election, may not be appointed to fill the vacancy in the office of mayor in a city with a population of 12,000 or more. This person may, however, be appointed to fill a vacancy on the council that will be created when the vacancy in the office of mayor is filled from the council.

Dear Mayor Pruett:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Albertville.

### QUESTIONS

(1) How and when is the vacancy in the office of mayor to be filled when the city council, as required by section 17-5-18 of the Code of Alabama, did not issue a certificate of election to a candidate for mayor who received a majority of the votes because he failed to file a report of contributions and expenditures?

(2) Can the candidate who won the election, but who failed to file the required report, be appointed to fill the vacancy in the office of mayor or the vacancy in the office of council?

### FACTS AND ANALYSIS

Your request states that the City of Albertville held an election for the office of mayor on August 26, 2008. The officer elected at this election should take office on the first Monday in November following the election. ALA. Code § 11-46-21 (Supp. 2007). Your request further states that the candidate who received a majority of the votes did not file a 10 to 5 day report of contributions and expenditures until the date of the election. Pursuant to section 17-5-18 of the Code of Alabama, the city council did not issue this candidate a certificate of election.

Section 17-5-8 of the Code of Alabama requires a candidate's principal campaign committee to file a report of contributions and expenditures between 10 and 5 days before the date of the election for which the committee receives contributions or makes expenditures with a view toward influencing the results of the election. ALA. CODE § 17-5-8 (2006). Section 17-5-18 of the Code provides that "[a] certificate of election or nomination shall not be issued to any person elected or nominated to state or local office who shall fail to file any statement or report required by this chapter." ALA. CODE § 17-5-18 (2006).

Because the person who received a majority of the votes was not entitled to be issued a certificate of election, a vacancy in the office of mayor will occur at the beginning of the next term of office of mayor, the first Monday in November 2008. A vacancy in the office of mayor is filled under the provisions of section 11-43-42 of the Code of Alabama and the process depends upon whether the city is 12,000 or more in population or under 12,000 in population. You have informed this Office that the City of Albertville is over 12,000 in

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population. Section 11-43-42(a) of the Code relates to a city of 12,000 or more and states, in pertinent part, as follows:

In the event of a vacancy from any cause in the office of mayor, the president of the council shall succeed to the office of mayor for the unexpired term. In the event of a vacancy in the office of the president of the council, the president pro tempore shall, in like manner, be president of the council for the unexpired term. In the event of a vacancy in the office of the president pro tempore, the office shall be filled from the membership of the council.

ALA. CODE § 11-43-42(a) (1989).

At the beginning of the new term of office, the newly elected council will meet in an organizational session. ALA. CODE § 11-43-44 (Supp. 2007). This Office has been informed that, at this meeting, the council will elect from among its members a president of the city council and a president pro tempore. The president of the council elected at this meeting will automatically fill the vacancy in the office of mayor as specifically authorized in section 11-43-42(a) of the Code. The president pro tempore elected at this meeting will automatically fill the vacancy in the office of the president of the council as set forth in section 11-43-42(a) of the Code. A vacancy in the office of the president pro tempore shall then be filled from the membership of the council also as set forth in section 11-43-42(a) of the Code.

The filling of the vacancy in the office of the mayor as described above will create a vacancy on the council. A vacancy on the council is filled under the provisions of section 11-43-41 of the Code, which provides that vacancies shall be "filled by the council at the next regular meeting or any subsequent meeting of the council." ALA. CODE § 11-43-41 (1989). The city council has the authority to fill the vacancy on the city council with any person the council chooses as long as that person meets the legal qualifications required by law to hold the office. You have informed this Office that the council members are elected at-large and not by districts. The council is not required but may fill the vacancy on the council by appointing the candidate for mayor who won the election but who was not issued a certificate of election; assuming that person meets the legal qualifications to hold the council office that is vacant. *See Ex parte Krages*, 689 So. 2d 799, 809 (1997) (municipal governing body may fill a vacancy under section 11-43-42 of the Code with a person who failed to file a disclosure report before the date of the election).

CONCLUSION

A vacancy in the office of mayor will occur at the beginning of the next term of office of mayor, the first Monday in November 2008. The vacancy must be filled according to the provisions of section 11-43-42(a) of the Code of Alabama, which is applicable to a city with 12,000 or more in population. The president of the council elected at the organizational meeting of the council will automatically fill the vacancy in the office of mayor.

The candidate for mayor who received a majority of the votes, but who was not issued a certificate of election because he failed to file a report of contributions and expenditures before the date of the election, may not be appointed to fill the vacancy in the office of mayor in a city with a population of 12,000 or more. This person may, however, be appointed to fill a vacancy on the council that will be created when the vacancy in the office of mayor is filled from the council.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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