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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Secretary of State – Electronic Signature
– Uniform Electronic Transactions Act –
Voter Registration – Rules and
Regulations

The Secretary of State is authorized under section 17-3-1 of the Code of Alabama to promulgate rules and regulations regarding voter registration. Because the Secretary of State is authorized to promulgate rules regarding voter registration, the Uniform Electronic Transactions Act authorizes the Secretary of State to promulgate rules that would allow the development and use of an online voter registration system.

Dear Secretary Chapman:

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

QUESTION

As Secretary of State, am I authorized under the Uniform Electronic Transactions Act to promulgate rules that would allow the development and use of an online voter registration system for qualified overseas members of the

military and overseas defense contractors, as well as their eligible overseas family members?

FACTS AND ANALYSIS

Alabama's adoption of the Uniform Electronic Transactions Act ("UETA") is codified at section 8-1A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 8-1A-1 to 8-1A-20 (2002). The majority of the act relates to transactions where the government acts as a commercial party. *See* ALA. CODE § 8-1A-3 (2002) ("Scope"). By contrast, sections 8-1A-17 through 8-1A-19 allow governmental agencies with rulemaking authority to create and process electronic records in other circumstances. Specifically, section 8-1A-18(a) states, in pertinent part, as follows:

(a) Except as otherwise provided in subsection (f) of Section 8-1A-12, the Alabama Supreme Court and any other court or judicial official or entity with rulemaking authority and *each governmental agency of this state with rulemaking authority* reviewable under Section 41-22-23 *may determine by rule whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.*

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify each of the following:

(1) The manner and format in which the electronic records shall be created, generated, sent, communicated, received, and stored and the systems established for those purposes.

(2) If electronic records must be signed by electronic means, the type of

electronic signature required, the manner and format in which the electronic signature shall be affixed to the electronic record, and the identity of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process.

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

ALA. CODE § 8-1A-18(a) (2002). Pursuant to section 17-3-1 of the Code of Alabama, the Secretary of State has the authority to promulgate rules and regulations regarding voter registration. *See* ALA. CODE § 17-3-1 (2006) (“[t]he Secretary of State may promulgate rules for the receipt of applications for registration and the expedient administration of those applications. . . .”). Accordingly, it is the opinion of this Office that section 8-1A-18 gives the Secretary of State authority to promulgate rules applicable to online voter registration.

This interpretation is further supported by a review of the relevant Official Comments that follow section 8-1A-19 of the Code. The UETA was model legislation that was offered for consideration of state legislatures nationwide. Sections 17-19 of the UETA were optional provisions for the states to consider. Alabama chose to make minor changes to these sections and to codify them as sections 8-1A-17 through 8-1A-19. The Official Comment to the proposed model act, sections 17-19 state, in pertinent part, as follows:

1. Sections 17-19 have been bracketed as optional provisions to be considered for adoption by each State. Among the barriers to electronic commerce are barriers which exist in the use of electronic media by state governmental

agencies . . . whether among themselves or in external dealing with the private sector. In those circumstances where the government acts as a commercial party, e.g., in areas of procurement, the general validation provisions of this Act will apply. That is to say, the government must agree to conduct transactions electronically with vendors and customers of government services.

However, there are other circumstances when government ought to establish the ability to proceed in transactions electronically. Whether in regard to records and communications within and between governmental agencies, or with respect to information and filings which must be made with governmental agencies, these sections allow a State to establish the ground work for such electronicization.

2. *The provisions of Sections 17-19 are broad and very general.* In many States they will be unnecessary because enacted legislation designed to facilitate governmental use of electronic records and communications is in place. However, in many States broad validating rules are needed and desired. Accordingly, this Act provides these sections as a baseline.

. . .

3. *The provisions in Sections 17-19 are broad and general to provide the greatest flexibility and adaptation to the specific needs of the individual States.* The differences and variations in the organization and structure of governmental agencies mandate this approach. . . .

4. *Section 17 authorizes state agencies to use electronic records and electronic signatures generally for intra-governmental purposes, and to convert written records and manual signatures to electronic records and*

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electronic signatures. . . . It also authorizes the destruction of written records after conversion to electronic form.

5. *Section 18 broadly authorizes state agencies to send and receive electronic records and signatures in dealing with non-governmental persons. . . .*

ALA. CODE § 8-1A-19 Official Comment (2002) (emphasis added).

CONCLUSION

The Secretary of State is authorized under section 17-3-1 of the Code of Alabama to promulgate rules and regulations regarding voter registration. Because the Secretary of State is authorized to promulgate rules regarding voter registration, the Uniform Electronic Transactions Act authorizes the Secretary of State to promulgate rules that would allow the development and use of an online voter registration system.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
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By:



BRENDA F. SMITH
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