



2009-089

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

July 9, 2009

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Honorable Johnny Traffanstedt
Mayor, Town of Collinsville
Post Office Box 390
Collinsville, Alabama 35961

BEFORE CITING, SEE KILLINGSWORTH V. HART,
CV-2009-274 (WALKER COUNTY CIRCUIT COURT
ORDER DATED 9-25-2009) (copy attached)
(CITY MAY CALL A SPECIAL ELECTION).

Municipalities – Referendum Election –
Alcoholic Beverages – Elections – Dates –
Cherokee County – DeKalb County

A municipal governing body may not call for a special election and have that special election considered the election next succeeding the filing of the wet/dry petition. A municipal wet/dry referendum must be held at the same time as one of the elections enumerated in section 28-2A-1 of the Code of Alabama. Section 28-2A-1(f) of the Code of Alabama does not authorize a municipal governing body to set a special election for a wet/dry referendum. It only allows the municipal governing body to determine which election date next succeeding the filing of the wet/dry petition will be used for holding the wet/dry referendum.

Dear Mayor Traffanstedt:

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

QUESTION

Once a petition is filed, can the town council call for a "special option municipal election" and this "special option election" be considered the municipal election next succeeding the date of filing of the petition; or will the election have to be held at the next

general municipal election, primary, general, or county-wide election next succeeding the date of the filing of said petition?

FACTS AND ANALYSIS

In your letter of request, you inquire as to whether the language of section 28-2A-1(f), as amended by Act 2009-546, allows for a wet/dry referendum to be included in a special municipal election, called by the municipality, which would occur before the next succeeding primary, general, county-wide, or municipal election. Municipalities with a population of 1000 or more may conduct a wet/dry referendum pursuant to the provisions of section 28-2A-1, *et seq.*, of the Code of Alabama. *See, generally*, 2009 Ala. Acts No. 2009-546. Section 28-2A-1(c), which establishes the appropriate date and type of election in which a municipality may include a wet/dry referendum states, in pertinent part, as follows:

(c) Said municipal election shall be held and the officers appointed to hold same in the manner provided by law for holding other municipal elections and the returns thereof tabulated and the results certified as provided by law for such municipal elections. *Said municipal option election shall be held at the time of the primary, general, county-wide or municipal election next succeeding the date of the filing of said petition*, provided, however, said election shall not be held within less than 30 days from the date of the filing of said petition. . . .

ALA. CODE § 28-2A-1(c) (2003) (emphasis added).

In an opinion to the Honorable Betty Brewer, this Office previously addressed the issue of whether a special election, which would occur before the next election date enumerated by section 28-2A-1(c) of the Code of Alabama, may be set for a wet/dry referendum. Opinion to Honorable Betty Brewer, Cullman County Judge of Probate, dated July 17, 2001, A.G. No. 2001-222. In the *Brewer* opinion, this Office stated as follows:

Section 28-2A-1(c) provides that the election shall be held at the same time as one of the elections specifically mentioned in the statute. No exceptions to these dates are provided, and no other provision of law

allows the city or the county to set a different date or a special date for holding a wet/dry referendum.

Brewer at 2. It is evident from the *Brewer* opinion, and it is the opinion of this Office, that a county commission or municipal governing body may not call for a special election and have that election considered the election next succeeding the date of the filing of the wet/dry petition. The wet/dry referendum must be held at the same time as one of the elections specifically enumerated in section 28-2A-1(c) of the Code of Alabama.

In your letter of request, you refer to the amended language of section 28-2A-1(f) of the Code of Alabama and ask whether it allows a wet/dry referendum to be included in a special election. Section 28-2A-1(f) of the Code of Alabama states as follows:

Said municipal option election in said municipality may be held at the time of any primary, general, county-wide or municipal election *as determined by the county commission or the municipal governing body, as applicable*, provided a period of not less than 720 days must elapse between the dates of such municipal option elections; provided further, that a county wet-dry election or special method referendum may be held at any time without regard to the lapse of time between the dates of any county option elections.

2009 Ala. Acts No. 2009-546 (emphasis added). The pertinent portion of the amended language of section 28-2A-1(f), as amended by Act 2009-546, is set out above in bold.

Both subsections (c) and (f) of section 28-2A-1 of the Code of Alabama limit permissible election dates to the primary, general, county-wide, or municipal election dates. In interpreting the amendatory language, subsections (c) and (f) must be read so as to give effect to both sections. It is the opinion of this Office that these subsections, although they do not authorize a county or municipal authority to call a special election, do authorize the county or municipal governing body to determine from among the next succeeding election dates therein listed which specific election date will be used to hold the wet/dry referendum. Therefore, the wet/dry referendum must be held during the primary, general, county-wide, or municipal election next succeeding the date of the filing of the wet/dry petition, as determined by the applicable governing body.

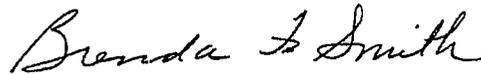
CONCLUSION

A municipal governing body may not call for a special election and have that special election considered the election next succeeding the filing of the wet/dry petition. A municipal wet/dry referendum must be held at the same time as one of the elections enumerated in section 28-2A-1 of the Code of Alabama. Section 28-2A-1(f) of the Code of Alabama does not authorize a municipal governing body to set a special election for a wet/dry referendum. It only allows the municipal governing body to determine which election date next succeeding the filing of the wet/dry petition will be used for holding the wet/dry referendum.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG/rc
821897/133277

**IN THE CIRCUIT COURT FOR WALKER COUNTY
STATE OF ALABAMA**

CASE NO: CV-2009-274

JOE KILLINGSWORTH AND DAMON BONNER,

PETITIONERS,

VS.

**CHRIS HART, as Mayor of the City of Carbon Hill, POLLY HALEY,
as Clerk of the City of Carbon Hill, and CITY OF CARBON HILL,
ALABAMA, a municipal corporation,**

RESPONDENTS.

DECLARATORY JUDGMENT

THIS CAUSE coming to be heard on the 25th day of September, 2009 upon the Petition for Declaratory Judgment filed by Joe Killingsworth and Damon Bonner against Chris Hart, Mayor of Carbon Hill, Polly Haley, Clerk of Carbon Hill, and City of Carbon Hill.

The parties to this action stipulated all issues of fact, which included but were not limited to a petition was presented to the City Council of Carbon Hill calling for a wet/dry municipal option election pursuant to the recently amended statute, Ala. Code § 28-2A-1, et seq., which meets and exceeds the technical requirements of the statute in that the signatories on the petition exceeded the 30% threshold to require the City Council of Carbon Hill to hold a municipal election and the statement on the petition was in compliance with Ala. Code § 28-2A-1, et seq. A certified copy of the petitions was admitted

FILED

SEP 25 2009

Susan Wilson
CIRCUIT CLERK - WALKER COUNTY, AL

as Petitioner's Exhibit A. The City Council of Carbon Hill unanimously passed a resolution on September 17, 2009 calling for an election on the issue for December 8, 2009, and has published notice of the election as is required by Ala. Code § 11-42-22 (1975) in a locally published newspaper of general circulation.

The issue has been raised subsequent to the adoption of the September 17, 2009 resolution as to whether the City Council of Carbon Hill has the statutory authority to call a special election for purposes of holding a municipal option election pursuant to Ala. Code § 28-2A-1, et seq. (1975), as was amended in 2009 Ala. Acts No. 2009-546. The confusion arises from recently issued Attorney General's Opinion 2009-089, which holds:

A municipal governing body may not call for a special election and have that special election considered the election next succeeding the filing of the wet/dry petition. A municipal wet/dry referendum must be held at the same time as one of the elections enumerated in section 28-2A-1 of the Code of Alabama. Section 28-2A-1(f) of the Code of Alabama does not authorize a municipal governing body to set a special election for a wet/dry referendum. It only allows the municipal governing body to determine which election date next succeeding the filing of the wet/dry petition will be used for holding the wet/dry referendum.

Ala. Code § 28-2A-1(c) (1975) states in pertinent part,

"Said municipal option election shall be held at the time of the primary, general, county-wide or **municipal election** next succeeding the date of the filing of said petition, provided however, said election shall not be held within

less than 30 days from the date of the filing of said petition..."

Further, Ala. Code § 28-2A-1(f) (1975) states in pertinent part,

"Said municipal option election in said municipality may be held at the time of any primary, general, county-wide or **municipal election** as determined by the county commission or the municipal governing body, as applicable..."

The issue presented to the court is one of law, that being what is the meaning of "**municipal election**" as provided in Ala. Code § 28-2A-1 (1975)? The term "**municipal election**" is not defined in Ala. Code § 28-2A-1, et seq. (1975).

The court must also look to the municipal election laws of this state, which are found at Ala. Code § 11-46-1, et seq. (1975) for guidance.

Multiple terms regarding elections at the municipal level are used in this subtitle of the code. A review of all sections makes clear there are three types of elections at the municipal level. First, "regular municipal election", "general municipal election", and "city election" all of which have the same meaning and is the initial election where city officials are elected on a regularly scheduled basis every four years, see, Ala. Code §§ 11-46-1, 11-46-5, 11-46-6, 11-46-20, 11-46-21, 11-46-22, and 11-46-55. Second, "runoff election" and "second

election" refer to the process of having an election between the two candidates receiving the most votes where no candidate received a majority of votes cast in the first election, see, Ala. Code §§ 11-46-5, 11-46-6, 11-46-21, and 11-46-55. Finally, third there are "special elections" which refer to elections called for particular dates apart from the regularly scheduled elections, see, Ala. Code §§ 11-46-20, 11-46-21, and 11-46-22.

There is a term repeatedly used in this subtitle, which encompasses these three types of elections it is "**municipal election**", see Ala. Code §§ 11-46-22, 11-46-27, 11-46-30, 11-46-33, 11-46-38, 11-46-62, and 11-46-65. The term "**municipal election**" is found most often in sections where the process of the election is discussed for example: issues regarding machines used, duties of the City Clerk in elections, duties of inspectors, the illegality of poll watchers consuming alcoholic beverages while being a poll watcher, the illegality of voters in an election exchanging money for a vote, and contests of elections.

Basic statutory construction and interpretation requires that statutes be interpreted *in pari materia*. When considering these two titles of the code together it is clear that the term "**municipal election**" encompasses the three types of elections at the municipal level, which does include a special election. There is no reference in

Attorney General Opinion 2009-546 to Title 11 of the Code of Alabama regarding the conduct and types of municipal elections.

Further, The petitioners make a valid argument for voter confusion on Election Day should it be held at the time of a statewide primary or general election. Municipal limits of the City of Carbon Hill are contained within Precinct 5, which encompasses a greater area than just the city limits. Elections in Carbon Hill are held at the municipal building. To require two sets of ballots, two sets of polling lists, two sets of poll workers would create intolerable confusion. The Court is certain if this were allowed to occur many of the electorate would be confused, disheartened, frustrated all of which would result in many voters being disenfranchised of their right to vote. It is clear the statute provides broad choices of potential elections available to municipal governing bodies to prevent these types of situations from occurring.

The legislature anticipates municipalities may vote on the wet/dry issue multiple times and provides the limitation that these elections can only occur at two-year intervals. Statewide general and primary elections occur at two-year intervals. However, "regular municipal election", "general municipal election", and "city election" only occur once every four years. For this reason the legislature did not use this designate these elections but rather used the all-inclusive

term of "**municipal election**" that includes special elections within a municipality.

The issues of legislative intent and potential voter disenfranchisement are all-important issues. However, the as previously noted the plain reading of the code is sufficient to resolve this matter. The term "**municipal election**" is an all-inclusive term, which includes general municipal elections, run-off elections and special elections within a municipality.

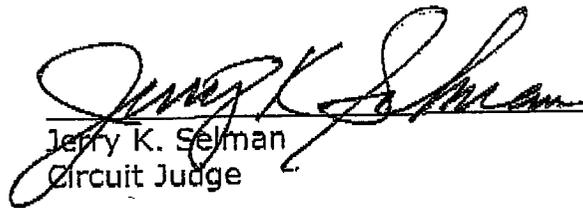
IT IS THEREFORE THE ORDER, JUDGMENT AND DECREE of this court as follows:

- A. The term "**municipal election**" as contained in Ala. Code § 28-2A-1 (1975) is inclusive of special municipal elections. The City Council of Carbon Hill was within its statutory authority adopting the September 17, 2009 resolution calling for a municipal option election for December 8, 2009.
- B. The respondents are ordered to conduct a special municipal option election pursuant to the September 17, 2009 resolution of the City Council of Carbon Hill on December 8, 2009 with the polls opening at 7:00 a.m. and closing at 7:00 p.m.

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- C. The respondent City of Carbon Hill is ordered to pay attorney for the Petitioners, Jonathan C. Sapp, attorney fees of three thousand dollars (\$3,000.00).
- D. Cost of court is assessed against the respondent, City of Carbon Hill.

DONE this the 25th day of September, 2009.


Jerry K. Selman
Circuit Judge