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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Wynnton Melton
Mayor, City of Geneva
Post Office Box 37
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Municipalities – Referendum Election
– Alcoholic Beverages – Municipal
Elections – Geneva County

A municipal option election held pursuant to sections 28-2A-1 through 28-2A-3 of the Code of Alabama must be conducted by the municipality in the same manner that the municipality conducts other municipal elections regardless of the date of the election.

Dear Mayor Melton:

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

QUESTION

If a petition for a municipal option election is filed under section 28-2A-1, and the election is to be held at the time of a primary, general, or county-wide election, does the county hold the election for the city and include it on the county ballot, appoint poll workers, determine polling places, and perform other essential functions of the election? Or, does the city hold its own election with its own ballots, at the city polling sites, appoint municipal poll workers, and merely coordinate the date of the municipal option election to coincide with the date of the primary, general, or county-wide election as applicable?

FACTS AND ANALYSIS

Sections 28-2A-1 through 28-2A-3 of the Code of Alabama, as amended by Act 2009-546, allow certain municipalities having a population of 1000 or more to change its classification with regard to the sale of alcoholic beverages from wet to dry or dry to wet by a municipal option election and sets forth the manner in which this may be done. 2009 Ala. Acts No. 2009-546. Section 28-2A-1(c) of the Code sets forth the manner for holding the municipal option elections and states as follows:

Said municipal option 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. *Notice of said municipal option election shall be given by the governing body of the municipality by publication* at least three weeks before the date of election, in a newspaper in the municipality, or, if there be none, in a newspaper in the county, or, if there be neither, by posting such notice at the town or city hall, apprising the voters of the municipality that a municipal option election shall be held to determine whether such municipality shall be wet or dry under this article. The cost of said municipal option election, including the cost of notice by publication, shall be paid out of the general fund of the municipality.

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

Even though the election may be held at the same time as the primary election, the general election, or a county-wide election, the language in section 28-2A-1(c) specifically states that the election shall be

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conducted in the same manner provided by law for holding other municipal elections. Nothing in sections 28-2A-1 through 28-2A-3 authorizes the county to conduct the municipal option election.

The manner of conducting elections for the majority of the cities and towns having a mayor-council form of government is set forth in section 11-46-20, *et seq.*, of the Code of Alabama. ALA. CODE § 11-46-20 to § 11-46-74 (2008). Some provisions in title 17 of the Code are also applicable to municipal elections. These provisions of the Code provide that the city conducts the municipal election, including, but not limited to, the appointment of poll workers, the printing of the ballots, the use of municipal polling places, tabulating the ballots, and certifying the results. Thus, a municipal option election held pursuant to sections 28-2A-1 through 28-2A-3 of the Code must be conducted by the municipality in the same manner that the municipality conducts other municipal elections, regardless of the date of the election.

CONCLUSION

A municipal option election held pursuant to sections 28-2A-1 through 28-2A-3 of the Code of Alabama must be conducted by the municipality in the same manner that the municipality conducts other municipal elections regardless of the date of the election.

I hope this opinion answers your question. 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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