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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Danny L. Smith  
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Municipalities – Referendum Election –  
Alcoholic Beverages – Municipal Elections  
– Marshall County – Etowah County

The wording “last preceding general election of the municipality,” as used in section 28-2A-1(b) of the Code of Alabama, refers to the general election in cities and towns usually held on the fourth Tuesday in August.

The provisions of sections 28-2A-1(e) and 28-2A-3 of the Code of Alabama, as amended, require that the municipal option election encompass the entire city limits, whether in Marshall County or Etowah County.

Section 28-2A-1(e) of the Code of Alabama requires that the entire city limits come into compliance with the results of a municipal option election.

All of the qualified electors of Boaz who live in both Marshall County and Etowah County should be allowed to vote in a special municipal option election.

Dear Mr. Smith:

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

QUESTION 1

Does the wording "last preceding general election of the municipality" contained in Act 2009-546 change the opinion expressed in Opinion Nos. 2007-088 and 91-00007, and does the wording still refer to the general election in cities and towns usually held on the fourth Tuesday in August?

FACTS AND ANALYSIS

Your request states that the City of Boaz anticipates that it will receive a petition calling for a municipal option election pursuant to the provisions of section 28-2A-1 of the Code of Alabama. The city has several questions concerning how this election will be conducted based on the facts involved. Your letter of request included the following information:

The City of Boaz is an incorporated municipality that lies partly in Marshall County and partly in Etowah County and has a population in excess of 8000 persons. Marshall County and that part of Boaz that lies within Marshall County are dry and do not allow the sale or distribution of alcoholic beverages.

A small part of Boaz, which lies within Etowah County, was annexed into the city limits before Etowah County underwent a wet/dry referendum and was established as a wet county in the early 1970s. Other portions of Etowah County have been annexed into the city limits of Boaz after the countywide wet/dry referendum.

Effective August 14, 2009, the Town of Mountainboro, which lies wholly within Etowah County, was annexed into and became a part of the city limits of the City of Boaz. The Town of Mountainboro was wet, as to sales of alcoholic beverages, and has one establishment that serves alcoholic beverages on its premises. No other business or person in that part of the City of Boaz, which is in Etowah County, is licensed to serve, sell, or distribute alcoholic beverages.

Act 2009-546 amended section 28-2A-1 of the Code of Alabama. *See* ALA. CODE § 28-2A-1 (Supp. 2009). As noted in your request, Opinion Nos. 2007-088 and 91-00007 clearly stated that the phrase “last preceding general election of the municipality,” as used in section 28-2A-1(b), referred to the general election in cities and towns usually held on the fourth Tuesday in August. This portion of the statute gives guidance regarding how to derive the appropriate number of electors needed for the referendum petition. Although Act 2009-546 altered portions of section 28-2A-1, the particular phrase that you cited was not changed. Accordingly, the determination reached in the previous opinions is still appropriate.

### CONCLUSION

The wording “last preceding general election of the municipality,” as used in section 28-2A-1(b) of the Code of Alabama, refers to the general election in cities and towns usually held on the fourth Tuesday in August.

### QUESTION 2

Do the provisions of section 28-2A-1(e) of the Code of Alabama, as amended, require that the municipal option election encompass the entire city limits, whether in Marshall County or Etowah County?

### FACTS AND ANALYSIS

Section 28-2A-1(e) of the Code of Alabama states as follows:

If a majority of the voters voting in said municipal option election vote “no,” said municipality shall be a dry municipality under the terms of this article until the county shall by subsequent election or special referendum, vote wet, or the municipality shall by a subsequent municipal option election held under this article, vote wet.

ALA. CODE § 28-2A-1(e) (Supp. 2009).

Section 28-2A-3 of the Code of Alabama states the intent of the Legislature with regard to this particular article. Specifically, this section states as follows:

It is hereby declared the intention and the purpose of this article to permit an election by the citizens of certain municipalities to determine the wet or dry status of such municipalities with regard to the sale, distribution and consumption of alcoholic beverages within the corporate limits of such municipalities; and further that such election shall be provided only in those municipalities which can provide safeguards for the protection of the public welfare, health, peace and morals of the people. In the furtherance of the protection of the public welfare, health, peace and morals, the Legislature has determined that a population classification should be established to provide this method of municipal option election only in those municipalities with a population of 1,000 or more people within a county, excluding Clay, Randolph, and Blount Counties, it being the judgment of the Legislature that municipalities with a lesser population would be unable to support and maintain such protection where such municipality is located in a dry county, whereas a municipality of 1,000 or more population would have the resources and ability to support and maintain such safeguards.

ALA. CODE § 28-2A-3 (Supp. 2009).

Reading sections 28-2A-1(e) and 28-2A-3 together, it is the opinion of this Office that municipal option elections encompass the entire city limits of a municipality regardless of whether that municipality is situated within multiple counties.

### CONCLUSION

The provisions of sections 28-2A-1(e) and 28-2A-3 of the Code of Alabama, as amended, require that a municipal option election encompass the entire city limits, whether in Marshall County or Etowah County.

### QUESTION 3

Does section 28-2A-1(e) of the Code of Alabama require that an entire city limits, lying partially in a wet county and partially in a dry county, come into

compliance with the results of a municipal option election?

### FACTS AND ANALYSIS

As stated earlier, section 28-2A-1, *et seq.*, of the Code of Alabama is the mechanism by which a municipality changes its status from wet to dry or from dry to wet. These Code provisions, however, do not specifically address the situation that you have presented. Previously, in an opinion to Honorable Anne-Marie Lacy, Madison City Attorney, dated April 1, 2002, A.G. No. 2002-197, this Office determined that if a city located in a wet county expands its city limits into a dry county, the annexed property within the dry county would remain dry. After the issuance of this opinion, the Legislature passed section 28-2A-20 of the Code of Alabama.

Section 28-2A-20 provides the procedure to be taken by a legally wet municipality that annexes territory from a legally dry county. Section 28-2A-20 requires the governing body of the municipality to pass an ordinance calling for a citywide referendum and that a municipal option election be conducted to determine if the newly annexed territory should become wet. This statute specifically states that if the "referendum [to change the annexed portion from dry to wet] shall fail, the annexed portions of the municipality shall remain legally dry, but the vote shall not affect the wet status of those portions of the municipality which were legally wet before the referendum was conducted." ALA. CODE § 28-2A-20 (2003) (brackets added). Accordingly, but for section 28-2A-20, a majority vote of "no" in a subsequent municipal option election where a portion of the municipality was previously wet would result in the entire municipality becoming dry pursuant to section 28-2A-1(e).

Section 28-2A-20 addresses the inverse of your particular situation. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting a statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). There is, however, a presumption that the Legislature did not intend to make any alteration in the law beyond what it declares either expressly or by unmistakable implication. *Holmes v. Sanders*, 729 So. 2d 314, 316 (Ala. 1999). Where the statutory pronouncement is clear and unambiguous, a court must abide by the statute as written. Courts are to interpret statutes, not amend or repeal them under the guise of judicial interpretations. *Parker v. Hilliard*, 567 So. 2d 1343, 1346 (Ala. 1990).

The law is silent with respect to the appropriate action to be taken when a dry municipality annexes territory that is wet. Thus, you ask that if a municipal option election should be held by the entire city limits of Boaz under the

provisions of section 28-2A-1 of the Code, would the results of the vote apply to the entire city limits of Boaz. Because section 28-2A-20 is not applicable to your circumstances and may not be expanded to include your circumstances, it is the opinion of this Office that, pursuant to section 28-2A-1(e), a municipal option election operates to change the entire status of a municipality from dry to wet or from wet to dry.

#### CONCLUSION

Section 28-2A-1(e) of the Code of Alabama requires that the entire city limits come into compliance with the results of a municipal option election.

#### QUESTION 4

Because the City of Boaz is situated in both a wet county and a dry county, if a petition that complies with the requirements of section 28-2A-1 of the Code of Alabama is filed with the City Clerk of Boaz and the governing body calls for a municipal option election to determine if all of the City of Boaz should be wet, would all the citizens of Boaz who live in both Marshall County and Etowah County be allowed to vote in such election, or would only those citizens who live within that part of the city limits in Marshall County be allowed to cast votes?

#### FACTS AND ANALYSIS

As stated earlier, the special option election conducted within a municipality pursuant to section 28-2A-1, *et seq.*, of the Code of Alabama effects everyone within the corporate limits of the municipality. Although section 28-2A-1(d) does provide an instance where electors in a wet municipality may not participate in a special method referendum conducted by the county, the Legislature failed to set out the same mandates with regard to your factual circumstances. Moreover, section 28-2A-1(d) also states that only qualified voters shall vote within the municipal option election. It is the opinion of this Office that anyone residing within the municipality for 30 days before the election, whether in Marshall County or Etowah County, would be eligible to vote in the municipal option election. See ALA. CODE § 11-46-22 (2008).

CONCLUSION

All of the qualified electors of Boaz who live in both Marshall County and Etowah County should be allowed to vote in a special municipal option election.

QUESTION 5

If it is your opinion that the answer to Question 4 is that only residents residing in Marshall County should be allowed to vote, would the 30-percent requirement be 30 percent of voters who are registered in Marshall County, and how would the number of voters totaling that 30 percent be determined? For example: A total of 1670 voters cast ballots in the August 2008 municipal election for the City of Boaz. Some of those voters reside in Etowah County. Would the 30 percent be determined from the remaining 1370 who would be residents of Marshall County?

FACTS, ANALYSIS, AND CONCLUSION

This question is moot based on the response given to Question 4 above.

I hope this opinion answers your questions. 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