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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Mike Praytor
Lawrence County Judge of Probate
Post Office Box 310
Moulton, Alabama 35650

Municipalities – Incorporations – Petitions
– Probate Judges

Whether a person's name should be removed from an incorporation petition in instances where the incorporation committee has not been notified is a decision best suited for a determination by the probate judge.

Dear Judge Praytor:

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

QUESTIONS

Should persons seeking the removal of their names and property from an incorporation petition notify the committee that is circulating the petition of their desire to be removed?

Does the probate court have the authority to remove the names contained in the incorporation petition when the incorporation committee was not notified?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

A petition for the incorporation of a local community in our county was filed with the court on April 19, 2010. Before the incorporation petition was filed, a petition requesting the court to remove names and property from the incorporation petition was filed on March 24, 2010. The removal of the names and property would be fatal to the incorporation petition.

Section 11-41-1 of the Code of Alabama provides for the incorporation of an unincorporated community. This section states, in pertinent part, as follows:

When the inhabitants of an unincorporated community, which has a population of not less than 300, constituting a body of citizens whose residences are contiguous to and all of which form a homogeneous settlement or community, desire to become organized as a municipal corporation, they may apply to the judge of probate of the county in which the territory is situated, or the greater portion thereof if it is situated in two or more counties, for an order of incorporation, by a petition in writing signed by not less than 15 percent of the qualified electors residing within the limits of the proposed municipality and by the persons, firms, or corporations owning at least 60 percent of the acreage of the platted or unplatted land of the proposed municipality.

.....

The petition for incorporation shall be submitted by the persons seeking the incorporation referendum to the judge of probate by a verified application, which shall state the proposed name of the municipality, have attached thereto and as a part thereof an accurate plat of the territory proposed to be embraced within the corporate limits, including all subdivisions into lots, blocks, streets, and alleys, within the territory, if any, and have accurate description by metes and bounds of the boundary of the territory. The application shall contain proof of residence and qualifications as electors of petitioners and of persons affected. When determining the ownership of the lands, the person, firm, or corporation assessing the property for taxation

shall be accepted by the judge of probate as prima facie the owner thereof. All petitions circulated with respect to any proposed incorporation referendum shall be uniform in character. Each signer of a petition shall sign his or her name and shall have placed on the petition after his or her name his or her place of residence by street and number, if available, and the date on which the signature is affixed. The signatures attached to any petition need not be signed on one page, but each page shall have attached an affidavit by the person circulating the petition stating the number of signers on each page of the petition, that each signature signed on the page is the genuine signature of the person whose name it purports to be, and that the signature was made in the presence of the person circulating the petition.

ALA. CODE § 11-41-1 (2008).

Your initial inquiry seeks clarification regarding whether a person who signs an incorporation petition is obligated to inform the committee that is circulating the petition of his or her desire to no longer be listed on the petition. Part and parcel of this request is your desire to understand your authority or obligation to remove a person's name from the petition in an instance such as the one set out in your facts.

This Office has previously stated that a person may remove his or her name from an incorporation petition at any time prior to submission of the petition to the judge of probate. *See* opinion to Honorable William B. Duncan, Probate Judge, Lauderdale County, dated August 14, 1981, A.G. No. 81-00512. This rule was developed in an attempt to create finality in the petition process. *Id.*

In the facts as you presented them, however, it is questionable whether the person has sought the removal of his or her name prior to submission of the petition to your office because the request for removal was documented as being received by your office prior to the time the petition was filed. Nevertheless, it is incumbent on any person who agrees to sign a petition for incorporation to initially contact the petition committee and not the probate judge when that person seeks to have his or her name removed from an incorporation petition.

The office of probate judge is one of limited jurisdiction. As such, a question of primary importance is that of jurisdiction. *See, generally, Hill v.*

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Town of Douglas, 359 So. 2d 374 (Ala. 1978); citing *Meeks v. Town of Hoover*, 286 Ala. 373, 240 So. 2d 125 (1970). A probate court judge may hold a hearing to determine the validity of a petition for incorporation. Opinion to Honorable Don Davis, Mobile County Probate Judge, dated July 1, 2002, A.G. No. 2002-278.

In the present instance, there may have been any number of reasons why a person may have directly requested the probate judge to remove his/her name from an incorporation petition, not the least of which being a breakdown in communications between the person and the incorporation committee. Accordingly, it is the opinion of this Office that the probate judge may conduct a hearing to determine the validity or sufficiency of the present incorporation petition. If the probate judge determines that the petition is valid, an election should be conducted within 30 days of such determination.

CONCLUSION

Whether a person's name should be removed from an incorporation petition in instances where the incorporation committee has not been notified is a decision best suited for a determination by the probate judge.

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

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