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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Recounts – Candidates – Primary Elections
– Ballots – Expenses

The automatic recount provisions of section 17-16-20 of the Code of Alabama are not applicable in a primary election to a candidate for state office who is defeated by not more than one half of one percent of the total votes cast for that office.

Dear Secretary Chapman:

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

QUESTION

Are the automatic recount provisions of section 17-16-20 of the Code of Alabama operable so that a candidate for state office in a primary election, who is defeated by not more than one half of one percent of the total votes cast for that office, entitled to a recount of the ballots at state expense?

FACTS AND ANALYSIS

Section 17-16-20 of the Code of Alabama provides for an automatic recount of election results in certain limited circumstances and provides that the state shall pay for the expenses of the recount if the recount does not involve a county office. This section states as follows:

(a) When, *in a general election*, the election returns for any public office, including a judicial office, reflect that a candidate is defeated or any ballot statewide measure is defeated *by not more than one half of one percent of the votes cast for the office*, or the ballot measure, as certified by the appropriate election officer, a recount shall be held unless the defeated candidate submits a written waiver for the recount as provided herein:

(1) In the case of an election for any federal, state, circuit, or district office, or the state Senate, state House of Representatives, or any other office that is not a county office, a written waiver for a recount may be submitted to the Secretary of State within 24 hours after the certification of the results of the election. Upon receipt of the waiver, the Secretary of State shall immediately order the recount to be cancelled.

(2) In the case of an election for any county office, a written waiver for a recount may be submitted to the judge of probate within 24 hours after the certification of the results of the election. Upon receipt of the waiver, the judge of probate shall immediately order the recount to be cancelled.

(b) Any recount held pursuant to subsection (a) shall be commenced within 72 hours after certification of the results of a county election by the county canvassing board and within 72 hours after certification of the results of a state election by the state canvassing board.

(c) The canvassing board shall obtain the polling officials necessary to conduct the recount as required by this section to perform a recount of the vote. The polling officials shall be compensated in the same manner and at the same rate as provided by law for vote tabulation activities in an election that does not result in a recount.

(d) *The expenses of a recount* conducted pursuant to subsection (a) *shall be a state charge if the recount is held for an election for a federal, state, circuit, or district office, or the state Senate, state House*

of Representatives, or any other office that is not a county office. The expenses of a recount conducted pursuant to subsection (a) shall be a county charge if the recount is held for an election for county office.

(e) If a recount is conducted pursuant to subsection (a), the appropriate canvassing board or authority shall amend the initial certification of the election to reflect the results of the recount. The results of the recount shall be posted as the initial count and transmitted to the Secretary of State within 24 hours.

(f) If a recount is conducted pursuant to subsection (a), the time limit for contesting the election shall be suspended until the vote is recertified, reflecting the results of the recount.

(g) Costs shall be kept to a minimum by using county personnel or volunteer workers whenever possible. The recount shall be conducted under the supervision of a trained and certified poll official. Representatives of opposing interests shall be given at least 24 hours' notice and shall be invited to participate in the recount.

(h) The recount shall be conducted as simply as the type of equipment and local conditions permit provided that the following minimum safeguards are observed. The voted ballot container or envelope holding the ballots shall be delivered unopened, and still sealed in the original container, to the inspector in charge of the recount. A representative of the authority having custody of the ballots shall be present during the recount. The recount shall consist of reading the ballots through the counter. Any ballot that was counted in the original election, but is rejected by the counter in the recount, shall be counted by hand. Representatives of opposing interests may participate in the hand recount, and any unresolved disputes over the interpretation of the intent of the voter may be appealed to the canvassing board.

(i) When the recount has been completed, the ballots shall be returned to their container along with a printout of the recount results. The ballot container

shall be sealed and signed by the inspector conducting the recount and by the representative of the authority having custody of the ballots.

(j) If the results of a recount conducted under subsection (a) name as a winner a person other than the person initially certified, the outcome shall constitute grounds for an election contest as now prescribed by law.

ALA. CODE § 17-16-20 (2006) (emphasis added).

It is a well-settled rule of statutory construction that courts ascertain the Legislature's intent in enacting a statute from the language used in the statute itself, as well as from the reason for the statute and the goals the Legislature seeks to accomplish through the statute. *McGuire Oil Co. v. Mapco, Inc.*, 612 So. 2d 417 (Ala. 1992). All words of a statute should be given effect, where possible. *Ala. Bd. of Pardons and Paroles v. Brooks*, 802 So. 2d 242 (Ala. Civ. App. 2001); *Ex parte Darnell*, 262 Ala. 71, 76 So. 2d 770 (1954).

Further, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). Finally, under the principle of *expressio unius est exclusio alterius*, another rule of statutory construction, where a statute enumerates certain things on which it is to operate, the statute must be construed as excluding from its effect all things not expressly mentioned. *Ex parte T.B.*, 698 So. 2d at 129 (Ala. 1997); *Ex parte Holladay*, 466 So. 2d 956, 960-61 (Ala. 1985); *City of Birmingham v. Brown*, 241 Ala. 203, 208, 2 So. 2d 305, 309 (1941).

The plain language of section 17-16-20 states that "in a general election" a recount shall be held if a candidate is defeated by not more than one half of one percent of the votes cast for that office. No reference is made in this section to a primary election, and nothing in this section implies that it applies in a primary election. By expressly stating "in a general election," these rules of statutory construction require that this section be construed to apply only in a general election and not in a primary election.

Section 17-1-1 of the Code states that the provisions of title 17 shall apply to all primary elections and all elections by counties and municipalities. The courts have consistently held that specific provisions relating to specific

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subjects control general provisions relating to general subjects. *Ex parte Jones Mfg. Co., Inc.*, 589 So. 2d 208, 211 (Ala. 1991). The recount provision in section 17-16-20 is a specific provision. Under the rules of statutory construction, the general provisions of section 17-1-1 are not sufficient to overcome the more specific language limiting the operability of section 17-16-20 to general elections only.

CONCLUSION

The automatic recount provisions of section 17-16-20 of the Code of Alabama are not applicable in a primary election to a candidate for state office who is defeated by not more than one half of one percent of the total votes cast for that office.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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