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OFFICE OF THE ATTORNEY GENERAL

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Personnel Boards – Employees, Employers,
Employment – Counties

Part-time, temporary employees and temporary employees are considered persons employed within the service of the Marshall County Personnel Board (“Board”); thus, the Marshall County Personnel Board has the authority to regulate the hiring and employment of those persons. Part-time, permanent employees are subject to the same regulations as other permanent employees. Based upon the current regulations, once the Board determines that an appointing authority may appoint a temporary employee, the appointing authority may set out procedures to regulate and employ such persons, unless the Marshall County Personnel Board adopts additional regulations applicable to temporary employees.

Dear Mr. Maze:

This opinion of the Attorney General is issued in response to your request on behalf of the Marshall County Personnel Board.

QUESTION

Does Act 82-206, as amended, require the Marshall County Personnel Board to regulate the

personnel practices of Marshall County relative to part-time and temporary employees of Marshall County?

FACTS AND ANALYSIS

Act 82-206 provides for the establishment of a personnel board and merit system of employment within Marshall County. In general, the provisions of the act are applicable to "officials and employees in the service" of Marshall County. 1982 Ala. Acts 82-206, 242, 242-43. The act defines "employee" as "any person . . . who is employed in the service of Marshall County or any board, agency or instrumentality thereof." *Id.* at 242. "Merit employee" is defined as "any such employee who shall have completed his six months of probationary employment." *Id.* Your inquiry contemplates whether the Marshall County Personnel Board has the authority to regulate the practices of part-time and temporary employees of the county.

Section 11 of Act 82-206 states the following with regard to temporary employees:

Whenever a vacancy exists in any position in the service of the County, it shall be filled by appointment of one of the three persons who rank highest on the appropriate eligible register of the Board or by transfer within the service of the County from another position of the same class. However, the ranking lay-off of the same class shall be appointed in every instance. Whenever it is impossible for the Board to certify eligible persons to a vacancy, the Board may authorize the appointing authority to fill the vacancy temporarily pending the establishment of an eligible register. ***No such authorization may be given for longer than one hundred and twenty days, and an employee shall not receive more than one temporary appointment during one calendar year, and no such employee shall have status under this Act.*** All appointments, other than temporary appointments, shall be probationary for six months from the date of appointment. A probationary subordinate employee may be discharged by his appointing authority for unsatisfactory service at any time before the expiration of that period if the action is approved by the Board; a probationary department head employee may be discharged or demoted similarly by

his appointing authority upon approval by the Board.
After the expiration of the probationary period, an appointment shall become permanent.

Id. at 245-46.

Under the established rules of statutory construction, 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). Based on section 11 of Act 82-206, the Marshall County Personnel Board, or other appointing authority, may appoint a person to either a temporary or permanent position. A person appointed as a temporary employee has no status under Act 82-206 and remains in a perpetual probationary status for the duration of his or her 120 days of service. These employees are unable to attain permanent or merit employee status. It is, however, through successful completion of the probationary period that an employee progresses to the status of permanent or merit employee. Accordingly, although the Marshall County Personnel Board may regulate the personnel practices of any employee, only persons employed in a permanent or merit status have vested rights as set forth in Act 82-206 and the personnel policies and procedures manual for Marshall County.

It should be noted that the appointment of a person to a temporary employment position occurs only when it is "impossible for the Board [to] certify eligible persons to a vacancy" 1982 Ala. Acts 82-206, 242, 245. It is at that point that the Board "may authorize an appointing authority to fill the vacancy temporarily pending the establishment of an eligible register." *Id.* Such authorization may not last longer than 120 days. Because the act and personnel policies and procedures manual for Marshall County are silent with regard to further requirements regarding filling a temporary vacancy, the appointing authority may establish its own procedures for filling such a vacancy. It is, however, the opinion of this Office that the Marshall County Personnel Board may regulate temporary employees because temporary employees meet the definition of "employee" as set forth in section 2 of Act 82-206.

Part-time employees, although not referenced in Act 82-206, are defined within the personnel policies and procedures manual for Marshall County as "employee[s] employed in a position in which the employee is normally scheduled to work less than thirty-two (32) hours per week." Policies and Procedures of the Personnel Board, Marshall County, Alabama (rev. June 14, 2010). Conceivably, both a temporary and a permanent employee may work in a part-time status. Such a situation is neither precluded by the statute nor by the

Honorable Clint L. Maze
Page 4

personnel manual. As such, it is the opinion of this Office that the Marshall County Personnel Board may regulate part-time employees because part-time employees also meet the definition of "employee" as set out in section 2 of Act 82-206.

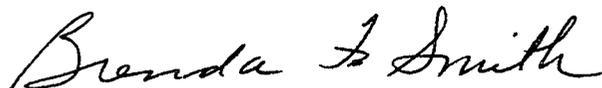
CONCLUSION

Part-time, temporary employees and temporary employees are considered persons employed within the service of the Marshall County Personnel Board; thus, the Marshall County Personnel Board has the authority to regulate the hiring and employment of those persons. Part-time, permanent employees are subject to the same regulations as other permanent employees. Based upon the current regulations, once the Board determines that an appointing authority may appoint a temporary employee, the appointing authority may set out procedures to regulate and employ such persons, unless the Marshall County Personnel Board adopts additional regulations applicable to temporary employees.

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

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