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Honorable Mike Ball
Member, House of Representatives
105 Canterbury Circle
Madison, Alabama 35758

Firefighters' Standards / Education
Commission - Employees,
Employers, Employment -
Delegation of Authority - Executive
Directors - Madison County

The Alabama Firefighter's Personnel Standards and Education Commission ("Commission") may not delegate, by way of adoption of policies and procedures, the authority to hire, promote, discipline, and terminate employees to the executive director.

The Alabama Firefighter's Personnel Standards and Education Commission may not ratify the appointments and terminations made under an improper delegation of authority. Moreover, appointments and terminations made under an improper delegation of authority are void.

Dear Representative Ball:

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

QUESTION 1

May the Alabama Firefighter's Personnel Standards and Education Commission delegate, by way of adoption of policies and procedures, its authority to hire, promote, discipline, and terminate employees to the executive director?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

The Alabama Firefighter's Personnel Standard and Education Commission employs an executive director pursuant to section 36-32-3 of the Code of Alabama. The same section authorizes the Commission to employ assistants and clerical employees as required to perform the functions and duties of the Commission.

* * *

Currently, the policies of the Commission delegate the authority of the Commission to hire, promote, demote, discipline and terminate employees to the executive director.

Your question contemplates the ability of the Commission to delegate the duty to hire, promote, discipline, and terminate employees. Previously, this Office has determined that the authority to terminate, unless specifically set out in a statute, is a nondelegable duty. Opinion to Honorable Kelly Westbrook, Executive Director of the State Board of Cosmetology, dated May 29, 1996, A.G. No. 96-00225; Opinion to Captain W. J. Diffley, Executive Director, USS Alabama Battleship Commission, dated March 29, 1984, A.G. No. 84-00223; *see also, Department of Mental Health and Mental Retardation v. Bendolph*, 808 So. 2d 54 (Ala. Civ. App. 2001).

Section 36-32-3 of the Code of Alabama States as follows:

The commission shall elect a chairman and a vice-chairman from among its members at its

first meeting and thereafter at its first meeting following the appointment of a new member. *The commission may employ an executive director who shall serve at the discretion of the commission. The commission may employ assistants to assist the executive director* as required to coordinate training and to conduct investigations pursuant to Section 36-32-5 and any technical assistance programs. *The assistants shall serve at the discretion of the commission.* The commission shall set the salaries of the executive director and assistants subject to the salary schedules adopted by the Alabama State Board of Education for the Alabama state community, junior, and technical colleges. The commission may employ such clerical assistants as functions and duties may require. *Final approval of hiring or dismissal of employees shall rest with the President of Shelton State Community College....*

ALA. CODE § 36-32-3 (2001)(emphasis added). Section 36-32-3 authorizes the Commission to employ an executive director and any needed assistants. Although both the executive director and any assistants serve at the discretion of the Commission, final hiring and dismissal of any employee rests with the President of Shelton State Community College. Nothing in this section authorizes the Commission to either directly hire or fire employees or delegate this type of authority to the executive director.

Because administrative rules and regulations must be consistent with the constitutional or statutory authority authorizing their promulgation, a regulation operating to create a rule out of harmony with the statute is a mere nullity. *Ex parte State Department of Human Resources*, 548 So. 2d 176, 178 (Ala. 1988). Thus, it is the opinion of this Office that the Alabama Firefighter's Personnel Standards and Education Commission may not delegate, by way of adoption of policies and procedures, the authority to hire or terminate employees to the executive director.

Although the final authority to hire or dismiss an employee is reserved specifically for the President of Shelton State Community College, the Commission would, however, be authorized to promote or

discipline employees. The Commission may determine that an executive director is in the best position to supervise the other employees. Thus, the Commission may choose to establish rules and regulations regarding the responsibility of an executive director in supervision, promotion, and discipline of employees.

CONCLUSION

The Alabama Firefighter's Personnel Standards and Education Commission may not delegate, by way of adoption of policies and procedures, the authority to hire, promote, discipline, and terminate employees to the executive director.

QUESTIONS 2 & 3

If the answer to question one is in the negative, may the Alabama Firefighter's Personnel Standard and Education Commission ratify the appointments and terminations made under an improper delegation of authority?

If the answer to question one is in the negative, may the Alabama Firefighter's Personnel Standard and Education Commission void the appointments and terminations made under an improper delegation of authority?

FACTS AND ANALYSIS

In your subsequent questions, you question whether the Commission may ratify the appointments and terminations made under an improper delegation or whether such appointments and terminations are void. In *Board of Education of Marshall County v. Baugh*, 199 So. 822 (Ala. 1941), the Supreme Court of Alabama held that "an act done in behalf of another without authority is by positive law or public policy declared to be illegal or void. Such act is not subject to ratification." *Baugh*, at p. 825. Accordingly, it is the opinion of this Office that any appointments or terminations made by the executive director of the commission were

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made under an improper delegation of authority. As such, actions of this nature may not be ratified, but instead, these actions are void.

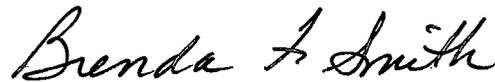
CONCLUSION

The Alabama Firefighter's Personnel Standards and Education Commission may not ratify the appointments and terminations made under an improper delegation of authority. Moreover, appointments and terminations made under an improper delegation of authority are void.

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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