



2011-038

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Joseph B. Morton
Superintendent of Education
Department of Education
Gordon Persons Building
Post Office Box 302101
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Education, Department of – Payroll
Deductions – Political Activities –
Education, Boards of – Effective
Date – Act No. 2010-761

After the effective date of Act 2010-761, which is March 20, 2011, and after preclearance is received, no employee of a local school board may arrange, by salary deduction or otherwise, for any payments for the membership dues of any person employed by the local school board to be made to a membership organization that uses any portion of the dues for political activities as defined in the act.

Dear Dr. Morton:

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

QUESTION

Are local boards of education allowed to deduct membership dues for membership organizations that use any portion of the membership dues for political activity from payrolls dated after the effective date of Act 2010-761 if the employee/member or the membership organization has submitted the documents necessary for

employee payroll deductions prior to the effective date of this act?

FACTS AND ANALYSIS

Your request states that the State Superintendent of Education has the authority to review actions of local school superintendents and local boards of education in matters relating to finance, and pursuant to that authority, you seek an interpretation of Act 2010-761 so that you may properly advise the local boards of education regarding their payroll obligations. *See* ALA. CODE § 16-4-8 (2001).

Act 2010-761 amended section 17-17-5 of the Code of Alabama relating to the prohibition of political activities by state, county, and city employees and added, in pertinent part, the following:

(b) No person in the employment of the State of Alabama, a county, a city, a local school board, or any other governmental agency may arrange by salary deduction or otherwise for any payments to a political action committee or *arrange by salary deduction or otherwise for any payments for the dues of any person so employed to a membership organization which uses any portion of the dues for political activity.*

2010 Ala. Acts No. 2010-761 (emphasis added). Subsection (c) was added by the act, and it states, in pertinent part, that “[a]ny person who violates this section shall be guilty of the crime of trading in public office and upon conviction thereof, shall be fined or sentenced, or both as provided by Section 13A-10-63.” *Id.*

Act 2010-761 becomes effective 90 days following its passage and approval by the Governor. The act was signed by the Governor on December 20, 2010, and thus, the effective date of the act is March 20, 2011.

This Office submitted the act to the United States Department of Justice (“Department”) for preclearance under Section 5 with the following notation in the submission:

While the State is not sure that this Act does require preclearance, it may implicate the

example (of a change requiring preclearance) set out in 28 C.F.R. section 51.13(k) “[a]ny change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.”

Letter from Winfield J. Sinclair, Assistant Attorney General, Alabama Attorney General’s Office, to Chief, Voting Section, Civil Rights Division, United States Department of Justice (January 4, 2011) (on file with author).

The submission was received by the Department of Justice on January 5, 2011. The Department has sixty calendar days from receipt of the submission in which to interpose an objection to a change. 42 U.S.C. § 1973c (2010). The sixty-day period will end on March 5, 2011, and the effective date of the act is March 20, 2011. The original submission, however, was supplemented on February 15, 2011, and expedited consideration was requested with the State asking for a decision by March 15, 2011.

The following information is provided in your request:

For background purposes, local school boards generally pay employees once per month on the last work day of a month. Payroll deductions for school employees are contained in an automated employee payroll file. The payroll process is completed at least three days before the payroll date in order to meet banking requirements for automatic deposits. A check for membership dues to organizations such as the Alabama Education Association (AEA) is generated during the payroll process. The monthly membership dues are then submitted to AEA on or after the payroll date (the last work day of the month).

After the effective date of Act 2010-761, no employee of a local school board may arrange, by salary deduction or otherwise, for any payments for the membership dues of any person employed by the local school board to be made to a membership organization that uses any portion of the dues for political activities as defined in the act.

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Based upon the information you provided regarding the payroll process, an employee of a local school board must take some action to generate and transmit a check for the membership dues to be paid from payroll deductions for the member employees. If this action will occur after the effective date of the act and after the act is precleared, the employee is not allowed to take that action. That employee is arranging for the payroll deduction to take place. For example, if membership dues for the month of March 2011 will be taken out of the payroll check to be issued on March 31, 2011, and the actions necessary to generate and transmit the check for the membership dues will occur after March 20, 2011, membership dues for the month of March 2011 may not be paid by payroll deduction.

CONCLUSION

After the effective date of Act 2010-761, which is March 20, 2011, and after preclearance is received, no employee of a local school board may arrange, by salary deduction or otherwise, for any payments for the membership dues of any person employed by the local school board to be made to a membership organization that uses any portion of the dues for political activities as defined in the act.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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