



2011-099

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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September 14, 2011

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Honorable Charles R. Singleton
Probate Judge, Washington County
Post Office Box 549
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Probate Judges – Incorporation – Petitions
– Municipalities – Ownership

Section 11-41-1 of the Code of Alabama requires that valid incorporation petitions contain signatures from 15 percent of registered voters residing in the area, owners of 60 percent of the total land in the area, and 4 registered voters residing on each 40 acres of the unincorporated community. A petition for incorporation must fail when the petition lacks the requisite signatures as set forth in section 11-41-1 of the Code.

The 60-percent-ownership requirement is in relation to the entire area to be incorporated. This figure should not be applied to each quarter of a quarter section of land in a proposed municipality.

Invalid petitions may be amended by the petitioner.

Dear Judge Singleton:

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

QUESTIONS

(1) Can a parcel of land be included in a petition for incorporation where the "persons, firms, or

corporations that own 60 percent of the land” have not signed the petition?

(2) Can this land ownership be applied to each quarter of a quarter of a section?

(3) Can a petition be amended?

FACTS AND ANALYSIS

Your request seeks guidance for interpreting section 11-41-1 of the Code. The provision mandates that citizens of an unincorporated community who wish to organize as a municipal corporation must petition the probate judge for an incorporation election. 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 . . . 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. No platted or unplatted territory shall be included within the boundary unless there are at least four qualified electors, according to government survey, residing on each quarter of each quarter section or part thereof of the platted or unplatted lands of the proposed municipality, who assent thereto in writing by signing the petition.

ALA. CODE § 11-41-1 (2008).

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).

The plain language of section 11-41-1 sets out three requirements for the incorporation petition. First, the petition must contain the signatures of 15 percent or more of qualified electors residing in the proposed municipality. This Office has opined that a person is not a qualified elector of a precinct or county unless he is registered to vote in that precinct or county. Opinion to Honorable Walker Hobbie, Jr., Judge of Probate, Montgomery County, dated July 8, 1997, A.G. No. 97-00219. Therefore, the petition must include signatures from 15 percent of registered voters residing in the proposed municipality.

Second, the provision requires that the landowners of 60 percent or more of the acreage in the proposed municipality sign the petition. The provision does not require the "persons, firms, or corporations owning 60 percent of the acreage" to be residents or qualified electors. Section 11-41-1 also does not require that the 60 percent come from each quarter of a quarter section. Therefore, the landowners of 60 percent or more of the entire acreage in the proposed municipality can include nonresidents and residents who are not registered to vote. In addition, it does not matter how many land-owning persons, firms, or corporations sign the petition so long as the ownership totals at least 60 percent of the entire proposed municipality.

Finally, the provision requires that four qualified electors residing on each quarter of a quarter section of the unincorporated community sign the petition. A quarter of a quarter section consists of 40 acres of land. Therefore, for the petition to be valid, four registered voters from each of the 40 acres in the proposed municipality must sign the petition. This provision prohibits vast sections of unincorporated land from being included in a proposed municipality. Thus, if four registered voters do not reside on a quarter of a quarter section, that parcel cannot be included in the proposed municipality.

In *Meeks v. Town of Hoover*, the Supreme Court of Alabama held that a probate judge cannot amend an invalid petition. 286 Ala. 373, 240 So. 2d 125 (1970). Petitioners, however, can amend an invalid petition. Section 11-41-2 mandates that a probate judge give petitioners up to 60 days to amend an invalid petition. ALA. CODE § 11-41-2 (2008). This Office has also opined that petitioners may withdraw and amend a petition before it is found invalid. If the petition is withdrawn and refiled, signatures from the first petition may not be used after 18 months. Opinion to Honorable Don Davis, Probate Judge, Mobile County, dated July 1, 2002, A.G. No. 2002-278. The amount of time within 18 months in which signatures are still valid, however, is a factual determination to be made by the probate judge. *Id.*

CONCLUSION

Section 11-41-1 of the Code requires that valid incorporation petitions contain signatures from 15 percent of registered voters residing in the area, owners of 60 percent of the total land to be incorporated, and 4 registered voters residing on each 40 acres of the land to be incorporated. A petition for incorporation must fail when the petition lacks the requisite signatures as set forth in section 11-41-1.

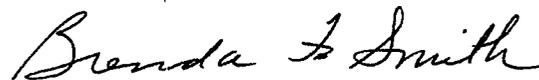
The 60-percent-ownership requirement is in relation to the entire area to be incorporated. This figure should not be applied to each quarter of a quarter section of land in a proposed municipality.

Invalid petitions may be amended by the petitioner.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division