2011-104

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

September 26, 2011

Honorable John W. Kelly III
Dallas County Attorney
530 Tremont Street
Post Office Box 303
Selma, Alabama 36702-0303

County Commissions – Primary Elections – Precincts – Redistricting

In preparing for the March 2012 presidential preference primary election and other 2012 regular primary elections, the Dallas County Commission is not required to wait until its first regular meeting in March 2012 to redraw district and precinct lines based on the 2010 federal census.

Dear Mr. Kelly:

This opinion of the Attorney General is issued in response to your request on behalf of the Dallas County Commission.

QUESTION

Given an apparent conflict in the law, can the Dallas County Commission approve changes to precinct lines earlier than at its first regular meeting in March 2012 so that new precinct lines can be drawn and submitted to the United States Department of Justice in time for use in the March 2012 primary elections?

FACTS AND ANALYSIS

Your request states that there appears to be a conflict between sections 17-6-3 and 17-6-6 of the Code of Alabama, which require the county commission to make changes to precinct lines at its first regular meeting in March in each even-numbered year and newly enacted Act 2011-566. Your request also states that the Dallas County Commission will be drawing new

district lines following the 2010 federal census and the district line changes generally necessitate changes in precinct lines.

As you note, section 17-6-3(a) of the Code requires the county commission to make changes to precinct lines "at its first regular meeting in March in each even-numbered year." ALA. CODE § 17-6-3(a) (2006). In addition, section 17-6-6(c) of the Code requires the county commission to adjust the boundary lines of the election precincts or authorize the probate judge to separate the list of qualified registered voters in such precinct to provide one electronic voting machine for every 2400 votes. ALA. CODE § 17-6-6(c) (2006).

Act 2011-566, which was precleared by the United States Department of Justice on August 22, 2011, amends sections 17-13-100 and 17-13-3 of the Code to change the date of the presidential preference primary election to the second Tuesday in March and also provides that regular primary elections will be held on that same date in presidential preference primary election years. 2011 Ala. Acts No. 2011-566.

In amending sections 17-13-100 and 17-13-3 of the Code, the Legislature did not address the provisions of sections 17-6-3 and 17-6-6. The primary goal of statutory interpretation is to determine legislative intent. *Ex parte Alabama Dept. of Mental Health and Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). Statutes must be construed *in pari materia* in the light of their application to the same general subject matter. The provisions should be construed in favor of each other to form one harmonious plan. Further, where more than one statute is involved, they should be construed in harmony with other statutes in effect, so far as is practical. *Bandy v. City of Birmingham*, --- So. 3d ---, 2011 WL 2420814 (Ala. June 17, 2011).

Section 17-6-1 of the Code provides as follows:

> It is the purpose of this chapter to provide for participation by the State of Alabama in programs of the Bureau of the Census of the United States Department of Commerce which provide for furnishing census information to the states for purposes of reapportionment, pursuant to federal laws for that purpose. It is further the purpose of this chapter to reduce voter confusion and facilitate the election process in Alabama.

ALA. CODE § 17-6-1 (2006).

Reading the provisions of sections 17-6-3 and 17-6-6 *in pari materia* with Act 2011-566, this Office does not find that, in changing the date of the 2012 primary elections from June to March, the Legislature intended to ignore the

important purpose of chapter 6 of title 17 as expressed in section 17-6-1 and the requirements of sections 17-6-3 and 17-6-6 regarding precinct lines. It is therefore the opinion of this Office that the Dallas County Commission is not required to wait until March 2012 to make changes to the precinct lines, but may do so before that date to allow sufficient time for any changes to be submitted to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973c. Any other interpretation would thwart the Legislature's intent to "reduce voter confusion and facilitate the election process in Alabama." ALA. CODE § 17-6-1 (2006).

CONCLUSION

In the light of the amendment of sections 17-13-100 and 17-13-3 of the Code by Act 2011-566, to change the date of the 2012 presidential preference primary election and other regular primary elections to the second Tuesday in March, the Dallas County Commission is not required to wait until its first regular meeting in March 2012 to redraw district and precinct lines following the 2010 federal census. Instead, such changes should be made early enough before the March 2012 primary elections to allow sufficient time for preclearance by the United States Department of Justice.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Jean Brown, Legal Division, Secretary of State's Office.

Sincerely,

LUTHER STRANGE
Attorney General
By:

Brenda F. Smith

BRENDA F. SMITH
Chief, Opinions Division

LS/JB/BFS

1201549/154691