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Honorable Barry D. Vaughn, Attorney
Fayetteville Water Authority
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Water Authorities – Boards – Term of Office – Residence Requirements – Talladega County

A board member of a water authority established pursuant to sections 11-88-1 through 11-88-21 of the Code of Alabama vacates office when that person moves outside of the portion of the service area for the appointing authority and outside of the county of the appointing authority.

Dear Mr. Vaughn:

This opinion of the Attorney General is issued in response to your request on behalf of the Fayetteville Water Authority.

QUESTION

If a board member of a water authority that encompasses two different counties was appointed by the county commission of one county, and moves within the district to the other county, does the board member remain a board member until his term expires, or does the board member become ineligible to serve because of the move to the other county within the same water district?

FACTS AND ANALYSIS

You informed this Office that the Fayetteville Water Authority services Talladega County and portions of Coosa County. This particular authority was

established pursuant to sections 11-88-1 through 11-88-21 of the Code. This system, which was initially incorporated to service Talladega County, had three board members from that county. In 1989, however, the certificate of incorporation was amended to include portions of Coosa County within the water district. As a result of this amendment, the Coosa County Commission is authorized to appoint one person to the Fayetteville Water Authority. *See, generally,* ALA. CODE § 11-88-5 (2008).

Based upon the information that you provided in a subsequent conversation, the board member appointed by the Coosa County Commission has moved from Coosa County to Talladega County. Because there is only one water district, arguably this board member has not moved out of the "district." Your inquiry questions whether the board member remains a member until his term expires or the board member is ineligible to serve because of his move to Talladega County.

Section 36-9-1(3) of the Code is the general provision regarding how a public office within this state may be vacated. Subsection three states that an office is vacated "[b]y the incumbent's ceasing to be a resident of the state or of the division, district, circuit or county for which he was elected or appointed[.]" ALA. CODE § 36-9-1 (2001). Section 11-88-6 of the Code more directly speaks to the matter at hand because this particular section sets forth the applicable set of laws regarding board members of a water authority. This section states, in pertinent part, as follows:

> (c) If any amendment to the certificate of incorporation of the authority, effected pursuant to the provisions of Section 11-88-5, shall increase the membership of the board, the board shall thereafter consist of such number of directors, elected by such governing bodies, as may be specified in the amendment . . . .
>
> (d) Each director elected by a county governing body shall be a duly qualified elector of that county and ***shall be a resident of and the owner of real property <u>in that part of the service area</u>*** of the authority ***which lies within <u>that county</u>*** . . . .

ALA. CODE § 11-88-6 (Supp. 2010) (emphasis added).

Reading section 11-88-6 as a whole, the Legislature intended that board members that are appointed by a particular governing body both reside and own property in the portion of a service area that represents the particular governing body that made the appointment. Based on the information provided, the member

of the board who was appointed by the Coosa County Commission has moved outside of the part of the service area for Coosa County and is no longer a resident of Coosa County. Accordingly, it is the opinion of this Office that the board member at issue vacated his position on the Fayetteville Water Authority when the board member moved outside the Coosa County service area and moved outside of Coosa County.

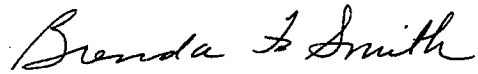
CONCLUSION

A board member of a water authority established pursuant to section 11-88-1 through 11-88-21 of the Code vacates office when that person moves outside of the portion of the service area for the appointing authority and outside of the county of the appointing authority.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



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