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**STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL**

**LUTHER STRANGE
ATTORNEY GENERAL**

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

Honorable Todd Entrekin
Sheriff of Etowah County
827 Forrest Avenue
Gadsden, Alabama 35901-3620

Honorable James E. Turnbach
Attorney, Etowah County Commission
Turnbach, Warren, Roberts and Lloyd
Chestnut at Second/Suite A
Post Office Box 129/200 Chestnut Street
Gadsden, Alabama 35902

Sheriffs – Elections – Records – Ballots –
Election Officials – Etowah County

Alabama law authorizes the sheriff and/or a duly appointed deputy sheriff to take control and secure the “records of elections container” from the inspector at the various voting precincts in the county and, from that point forward, the sheriff or the duly appointed deputy is responsible for maintaining security and control of the “records of elections container” as it is being transferred to the probate judge’s office.

The precinct inspector is authorized to retain possession of the memory pack until the same is delivered to the probate judge or to the county returning officer or his or her agent.

The county is not required or authorized to compensate the sheriff and/or sheriff’s deputies beyond their normal compensation for the performance of the sheriff’s election-day duties as county returning officer because the assistance provided by the sheriff on election day is part of the sheriff’s official duties.

Dear Sheriff Entrekin and Mr. Turnbach:

This opinion of the Attorney General is issued in response to a request from the Etowah County Sheriff and the Etowah County Commission.

QUESTIONS

(1) Does Alabama law prohibit the sheriff or a duly appointed deputy sheriff from taking control of and securing the ballot box and the “records of elections container” from the inspector at the various voting precincts in the county and from that point forward being responsible for maintaining security and control of the ballot box and the “records of elections container” as it is being transferred to the probate judge’s office?

(2) Does Alabama law allow only an inspector to retain possession of the memory pack until it is read?

(3) Is the county required or authorized to compensate the sheriff and/or the sheriff’s deputies for the performance of the sheriff’s election-day duties as county returning officer?

FACTS AND ANALYSIS

This Office is responding to the questions of Sheriff Entrekin and the Etowah County Commission in one opinion because the questions posed to this Office are similar in nature. Sheriff Entrekin asks the first question, and Questions 2 and 3 are posed by the Etowah County Commission. Questions 1 and 2 focus, to a certain extent, on who is responsible for maintaining and preserving certain election materials.

This Office was informed of the following:

Etowah County has 41 voting places located throughout the county. The county utilizes marksense ballots and precinct ballot counters at those locations. In previous elections, the inspectors for each precinct were responsible for returning the memory packet and related election paperwork to the county returning officer located at the courthouse. The memory packets

are read into the memory pack tabulator and displayed via means of computer for viewing.

At every voting precinct, there are various election officials. Included among such officials is the returning officer. There is a returning officer for the precinct and a returning officer for the county. Section 17-8-10 states that the sheriff is the returning officer for the county, and the inspector for each voting precinct is the returning officer for that precinct. ALA. CODE §§ 17-8-10, 17-8-1(b)(1) (2006).

Chapter 12 of title 17 deals with the canvassing of returns after an election. This chapter sets forth the actions that should be taken after a polling place closes, up to the declaration of the winner of the election. Section 17-12-8 sets out the procedures for sealing the ballots, certifying the poll lists, and delivering the record of election. This section specifically states that the inspector shall deliver the record of election containers to the county returning officer, i.e., the sheriff. ALA. CODE § 17-12-8 (2006); *see also*, ALA. CODE § 17-9-15 (2006).

Because the sheriff is required to be present in person or by deputy at all election precincts, it is the opinion of this Office that it is both appropriate and acceptable for the inspector to relinquish the record of election container to the sheriff or the sheriff's deputy who is present at the election precinct. ALA. CODE § 17-9-1 (2006).

Your inquiry also questions whether the inspector is the only person responsible for returning the data pack or memory pack to the probate judge. Section 17-12-12 of the Code sets forth the actions to be taken with regard to election records once the poll has closed. This section states, in pertinent part, as follows:

After completing and signing the certificate of result, the election officials shall seal the ballots, certificates, and other records as follows:

(1) Where precinct ballot counters are used:

a. The list of registered voters shall be delivered to the judge of probate for transmittal to the board of registrars for use by the board of registrars in updating their records.

b. The ballot accounting certificate and the first copy of the certificates of result shall be placed in an envelope addressed to the judge of probate who shall

keep them for public inspection or election contest, or both.

c. All voted ballots shall be placed in a voted ballot box and sealed. All spoiled ballots, unused ballots, and ballot stubs, one copy of the certificate of results, and the clerk's poll list (already sealed in a separate envelope) shall be placed in the records of election container which shall be sealed and signed by all election officials. The inspector shall deliver the sealed memory pack to the judge of probate.

d. Each envelope or container shall be sealed and signed across the seal by the inspectors. On the outside of each envelope the inspectors shall record the voting place and date of the election. The envelopes or containers shall remain unopened and be returned by the inspector immediately in the manner provided by law.

ALA. CODE § 17-12-12 (2006).

Subsection (c) of this statute states that “[t]he inspector shall deliver the sealed memory pack to the judge of probate.” *Id.* Although it is appropriate and allowable for the precinct inspector to personally or individually return the memory pack to the probate judge, nothing in this particular subsection or this statute specifies that the inspector is expected to deliver the sealed memory pack “*in person*” to the probate judge. *Id.* Subsection (d) of this statute also states that “each envelope or container shall be sealed and signed across the seal by the inspectors . . . [and t]he envelopes or containers shall remain unopened and be returned by the inspector immediately *in the manner provided by law.*” *Id.*

Data or memory packs are sealed within envelopes in a manner that is similar, if not identical, to the procedure used for other election materials. Subsection (d) authorizes the inspector to deliver the memory packs by way of the county returning officer because that is one manner of delivery that is “provided by law.”

Throughout the Code of Alabama, the precinct inspector is charged with providing the sealed envelopes and containers to the county returning officer. ALA. CODE § 17-12-8 (stating that the inspector must deliver the statement of the votes and poll list to the county returning officer); § 17-13-12 (stating that the inspector shall perform the duty of precinct returning officer and return and deliver all ballots and returns to the sheriff or county returning officer); § 17-9-15(2) (stating that the records of election container shall be delivered by the

inspector to the sheriff in all elections except municipal elections); § 17-8-10 (stating that the inspector at each voting place is charged with the duty of returning ballots and sealed materials from the voting place to the county returning officer). Based on the foregoing, it is the opinion of this Office that either the precinct inspector or the county returning officer is authorized to deliver the data or memory pack to the judge of probate.

Finally, you seek information regarding the compensation to be given to the sheriff and/or his deputies for the performance of election-day duties. Section 17-9-1 of the Code of Alabama charges the sheriff with the duty of preserving order at the various polling locations or precincts. As noted earlier, section 17-8-10 states that the sheriff is the county returning officer.

Although various provisions throughout title 17 provide for the mechanism in which election officials are to be compensated, the sheriff is not an election official. Further, there is no statutory authority that authorizes the sheriff or his deputies to be compensated or receive additional compensation for this work on election day, which is part of his or her official duties as prescribed by law.

Public employees are not authorized to receive increased or additional compensation for services already rendered. ALA. CONST. art. IV, § 68. This particular provision also prohibits employees from receiving lump-sum bonuses or incentive pay unless the compensation is prospective, treated as a regular part of an employee's compensation, made pursuant to a written policy, and the payment was in exchange for the employee providing additional consideration. *See, generally*, opinion to Honorable Donald R. Rhea, Attorney for Sheriff of Etowah County, dated January 30, 2009, A.G. No. 2009-036; opinion to Honorable Joe W. Campbell, Attorney, Health Care Authority of North Alabama, dated September 28, 2006, A.G. No. 2006-153.

In *Campbell*, this Office, citing *Kohen v. Bd. of Sch. Commissioners of Mobile Co.*, 510 So. 2d 216 (Ala. 1987), discussed how there was no violation of section 68 of the Constitution where school employees received a bonus when those employees had perfect attendance and thus relinquished their sick days. In this example, the teachers were seen as providing additional compensation not by performing their obligation of teaching, but instead by giving up their entitlement to being absent and receiving compensation for sick days. Hence, as a general rule, performance of one's stated duties typically should not qualify for additional consideration.

Based on the foregoing, it is the opinion of this Office that the county is not required to compensate the sheriff and/or the sheriff's deputies for the performance of the sheriff's election-day duties as county returning officer and may not be authorized to provide additional compensation for the performance of regular duties.

CONCLUSION

Alabama law authorizes the sheriff and/or a duly appointed deputy sheriff to take control and secure the "records of elections container" from the inspector at the various voting precincts in the county and, from that point forward, the sheriff or the duly appointed deputy is responsible for maintaining security and control of the "records of elections container" as it is being transferred to the probate judge's office.

The precinct inspector is authorized to retain possession of the memory pack until the same is delivered to the probate judge or to the county returning officer or his or her agent.

The county is not required or authorized to compensate the sheriff and/or sheriff's deputies beyond their normal compensation for the performance of the sheriff's election-day duties as county returning officer because the assistance provided by the sheriff on election day is part of the sheriff's official duties.

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