



2013-029

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

January 31, 2013

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Honorable Jay M. Ross  
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**DO NOT CITE - See Act 2015-81, which amends section 11-44G-2 of the Code of Alabama.**

Municipalities - Mayors - Vacancies in  
Office - Population - Baldwin County

The City of Daphne must follow the provisions of section 11-44G-2 of the Code of Alabama to fill a vacancy in the office of mayor.

Dear Mr. Ross:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Daphne.

QUESTION

Which provision of the Code, either section 11-43-42(a) or section 11-44G-2 of the Code of Alabama, should be followed for the City of Daphne to fill a vacancy in the office of the mayor?

FACTS AND ANALYSIS

According to your request, the City of Daphne is a class 8 municipality with a population of 12,000 or more. A vacancy has arisen in the office of mayor.

As you point out in your request, section 11-43-42(a) of the Code addresses the filling of a vacancy in the office of mayor in cities with 12,000 or more inhabitants. ALA. CODE § 11-43-42(a) (2008). You also reference section 11-44G-2 of the Code, which covers filling a vacancy in the office of mayor in class 7 and 8 municipalities. ALA. CODE § 11-44G-2 (2008). Because the City of Daphne possesses the characteristics triggering both statutes, a population greater than 12,000 and a class 8 municipality, you question which statute is applicable to the City of Daphne.

This Office has had opportunity to address a similar question previously. In an opinion to Honorable B. J. Meeks, this Office determined that section 11-43-42 of the Code is a general statute relating to absences or vacancies in the position of mayor and that section 11-44G-2 is a specific statute relating to class 7 and 8 municipalities. Opinion to Honorable B. J. Meeks, Mayor, City of Childersburg, dated April 20, 2011, A.G. No. 2011-055. There, this Office concluded that, “[b]ecause specific provisions relating to specific subjects control general provisions relating to general subjects, it is the opinion of this Office that an absence in the position of the mayor in a class 7 or 8 municipality should be handled pursuant to section 11-44G-2 of the Code of Alabama.” *Id.* at 2, *citing, generally, Ex parte Jones Mfg. Co., Inc.*, 589 So. 2d 208, 211 (Ala. 1991).

Additionally, section 11-44G-2 of the Code, adopted in 1997, is the more recently enacted statute. In cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986); *Soles v. State*, 820 So. 2d 163, 165 (Ala. Crim. App. 2001); *Ex parte CSX Transp., Inc.*, 533 So. 2d 613, 617 (Ala. Civ. App. 1987). Accordingly, because section 11-44G-2 of the Code is a specific statute relating to class 7 and 8 municipalities and the more recent expression of the Legislature, section 11-44G-2 of the Code governs the filling of a vacancy in the office of mayor for the City of Daphne.

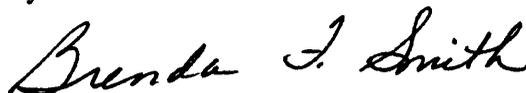
#### CONCLUSION

The City of Daphne must follow the provisions of section 11-44G-2 of the Code to fill a vacancy in the office of mayor.

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

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division