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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Sheriffs – Personnel Boards – Votes –
Appointing Authorities – Civil Service
System – Law Enforcement Officers –
Mobile County

Pursuant to the provisions of Act 2004-105, the Sheriff of Mobile County (“Sheriff”) is entitled to three votes on the Supervisory Committee of the Mobile County Personnel Board (“Supervisory Committee”), provided the chair of the Supervisory Committee determines that the Sheriff of Mobile County has the requisite number of civil service employees occupying permanent positions.

The personnel director for the Mobile County Personnel Board is required to certify to the Sheriff of Mobile County a list of eligible persons for law enforcement positions. The list must contain ten additional names for each vacancy and must be in ranked order. The Sheriff, upon receipt of the list, may interview and hire from anywhere on the list.

Dear Ms. McConaha:

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

QUESTION 1

How many votes is the Sheriff of Mobile County entitled to cast as a member of the Supervisory Committee of the Mobile County Personnel Board?

FACTS AND ANALYSIS

In 1939, the Alabama Legislature enacted Act 470, which created a county-wide civil service system in Mobile County. 1939 Ala. Acts No. 470, 298-318. The Legislature amended Act 470 in 1955, 1965, 1986, and again in 2004. 1955 Ala. Acts No. 167, 431-32; 1965 Ala. Acts No. 36, 1965 3rd Sp. Sess., 246-51; 1986 Ala. Acts No. 86-479, 910-19; 2004 Ala. Acts No. 2004-105, 145-59. Act 470, as amended, establishes a Supervisory Committee composed of the following:

The persons holding each of the following elective offices in Mobile County, Alabama, namely, the Presiding Judge of the Circuit Court, the Judge of Probate, the Revenue Commissioner, the Presiding Judge of the District Court of Mobile County, the County License Commissioner, the Chair of the Mobile County Commission, *the Sheriff of Mobile County*, and the Mayor of each of the incorporated towns and cities in Mobile County.

Id. at 145-46 (emphasis added). Various other enumerated non-elected officials are also members of the Supervisory Committee. *Id.* at 146.

Act 470, as amended, further states the following:

Except as otherwise provided herein, *each member of the Supervisory Committee shall be entitled to cast one vote* on any matters considered at any regular or special meeting of the Supervisory Committee. *In addition thereto, each jurisdiction in Mobile County under the control of the Mobile County Civil Service System, shall be entitled to cast one additional vote for each 400, or major fraction thereof, Civil Service employees occupying permanent positions as of December 31st of the year preceding any meeting of the Supervisory Committee, the additional votes to be cast by the elected official designated in subsection (b)1. having appointing authority over such employees in the jurisdiction.* All voting of the Supervisory

Committee shall be by roll call vote. Voting by proxy shall not be allowed.

Id. at 146-47 (emphasis added). “The chair [of the Supervisory Committee] shall be the sole judge of the number of votes a member of the committee shall have” *Id.* at 147.

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)

According to your request, the Sheriff of Mobile County has 650 civil service employees occupying permanent positions. Thus, if the Sheriff is the appointing authority for these positions, the Sheriff would be entitled to additional votes based upon the number of his employees.

This Office has routinely stated that a sheriff has a common-law authority to appoint deputies and that the governing body merely has the authority to determine budgetary matters for the sheriff’s office. Opinion to Honorable William E. Shinn, Jr., Morgan County Attorney, dated July 9, 2008, A.G. No. 2008-104. This distinction in roles is recognized in the 2004 amendments to Act 470. *See, e.g.*, Section XI of 2004 Ala. Acts No. 2004-105, 153 (“[t]he budgeting authority for each Appointing Authority may establish pay ranges”). Moreover, Act 470, as amended, specifically defines the term “appointing authority” as follows:

[A] person, officer, board, commission, or other body or person whose lawful jurisdiction or powers are confined wholly or primarily within the territorial limits of Mobile County, or any incorporated city or town therein, and who or which have the power to make appointments to offices or positions of employment or trust in any of the Classified Service as in this act defined.

1939 Ala. Acts No. 470, 299.

The Sheriff meets the definition of “appointing authority.” The jurisdiction of the Sheriff extends to the county line. Opinion to Honorable Timothy B. McCool, Attorney for Pickens County Sheriff, dated January 12, 2012, A.G. No. 2012-026. The jurisdiction of a sheriff covers the entirety of their respective counties. Opinion to Honorable Lorey Bogen, Councilmember, Town of Brantley, dated March 18, 2008, A.G. No. 2008-063.

Additionally, according to your request, it is the Sheriff who submits statements of positions to the director of the personnel board, and it is the Sheriff to whom lists of eligible persons are submitted by the director. 2004 Ala. Acts 2004-105, 154-55. These functions are performed by the “appointing authority.” 2004 Ala. Acts 2004-105, 154-55. Therefore, the Sheriff of Mobile County is the “appointing authority” for the civil service employees in his employ.

Accordingly, if the chair of the Supervisory Committee determines that the Sheriff of Mobile County has 650 civil service employees occupying permanent positions, the Sheriff would be entitled to three votes on the Supervisory Committee: one vote as a member of the Supervisory Committee, one vote for having 400 employees, and one vote for having an additional 250 employees constituting a major fraction of 400.

CONCLUSION

Pursuant to the provisions of Act 2004-105, the Sheriff of Mobile County is entitled to three votes on the Supervisory Committee, provided the chair of the Supervisory Committee determines that the Sheriff of Mobile County has the requisite number of civil service employees occupying permanent positions.

QUESTION 2

May the Sheriff of Mobile County appoint any eligible applicant as a law enforcement officer, regardless of the position of the applicant on the list of eligible applicants certified to the Sheriff by the Personnel Director?

FACTS AND ANALYSIS

As discussed above, the Office of the Sheriff of Mobile County is subject to the provisions of Act 470, as amended, which establishes a county-wide civil service system for Mobile County. According to your request, there is some question on the procedure the Sheriff must follow in selecting appointments for law enforcement positions. Specifically, when filling a large number of deputy positions, the personnel director ordinarily provides a list to the Sheriff containing up to 70 names. The Sheriff wants to be able to choose from among all 70 of the eligible persons on the list. The personnel director maintains that the Sheriff must interview and either hire or decline to hire the first ten in the group before moving on to consider any of the remaining candidates on the list.

With respect to appointments to positions as a law enforcement officer, Act 470, as amended, states as follows:

[F]or initial applicants for appointment as law enforcement officers the director shall certify to the appointing authority the names of the top ten eligible persons on the appropriate register in alphabetical order, and *if more than one vacancy is to be filled, the names of ten additional eligible persons for each additional vacancy shall be added to the certification in the order they appear on the register*, or if agreeable to the appointing authority, all names on the register if there are less than ten eligible persons, regardless of the number of vacancies to be filled, shall be certified to the appointing authority. *Notwithstanding the above, all lists of applicants and employees for promotion in the Mobile Police Department, Mobile County Sheriff's Office and Mobile Fire Department shall be in ranked order when delivered to the appointing authority.*

...
Within 30 days after the names are certified, the appointing authority shall appoint one eligible person who is certified to each vacancy which is to be filled.

2004 Ala. Acts No. 2004-105, 155 (emphasis added).

The plain language of this section requires the personnel director to certify to the Sheriff a list of eligible persons for law enforcement positions. This section further requires that ten additional names “*shall be added* to the certification . . .” for each additional vacancy. *Id.* (emphasis added). Accordingly, if there are two vacancies, the list should contain twenty names. If there are three vacancies, the list should contain thirty names, and so on.

Although the personnel director is required to list the applicants in ranked order, the act places no restriction or directive on the Sheriff as to the order in which he must conduct interviews. To the contrary, Act 470, as amended, requires the Sheriff, as the appointing authority, to appoint one eligible person to each vacancy from the names on the list certified by the personnel director. *Id.*

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CONCLUSION

The personnel director for the Mobile County Personnel Board is required to certify to the Sheriff of Mobile County a list of eligible persons for law enforcement positions. The list must contain ten additional names for each vacancy and must be in ranked order. The Sheriff, upon receipt of the list, may interview and hire from anywhere on the list.

I hope this opinion answers your questions. 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

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