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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Lee Frazier
Birmingham City Clerk and Secretary
to the Election Commission
710 North 20th Street
City Hall -- Third Floor
Birmingham, Alabama 35203

Birmingham, City of – City Council
Members – Vacancies in Office – Special
Elections – Jefferson County

Section 3.09 of Act 452 (1955), as amended by Act 123 (1965), permits the Election Commission (“Commission”) to call an election to fill a vacancy on the Birmingham City Council (“Council”), regardless of whether the Council has chosen to appoint a person in the interim to the Council. The Commission may call an election to fill a vacancy on the Council in conjunction with the next election of any kind. Any person so elected is authorized to serve the unexpired term of office for that city council position.

Dear Mr. Frazier:

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

QUESTION

Should section 3.09 of Act 452 (1955) be interpreted as permitting an election to be held “at the next election of any kind” regardless of whether the Council has acted to temporarily fill the vacancy through appointment at one of its regular meetings?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that, pursuant to Act 2012-222, the Election Commission is designated to have charge of and hold all municipal elections for the City of Birmingham. 2012 Ala. Acts No. 2012-222. Recently, a vacancy occurred in District 4 on the Birmingham City Council. The Commission now seeks guidance related to duties it may be required to perform to fill the vacancy on the Council.

The City of Birmingham is governed by Act 452 (1955) ["Act 452"]. 1955 Ala. Acts No. 452, 1004. Section 3.09 of Act 452 provides for the filling of a vacancy on the city council. This provision, as it was amended by Act 123 (1965) ["Act 123"], states as follows:

Vacancies in the council shall be filled by the council at the next regular meeting or any subsequent meeting of the council, the person so elected to hold office only until the next election of any kind in which the voters of the city to which this Act applies are qualified electors, at which time said unexpired terms shall be filled by said electors in accordance with all provisions of law applicable to such city; in any event, the person elected shall hold office until his successor is elected and qualified.

1955 Ala. Acts No. 452, 1004, 1013 § 3.09, as amended by 1965 Ala. Acts 123, 190, 191.

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). Act 123 authorizes the Council to fill a vacancy by appointment at the next or any subsequent meeting. Any person so appointed serves until a person is elected by the qualified electors. The person who is elected serves for the unexpired term of office. 1965 Ala. Acts No. 123, 191.

Your inquiry questions whether the Election Commission may hold an election to fill the vacancy on the Council regardless of whether the Council chooses in the interim to appoint someone to the Council. Nothing in Act 123 prohibits the Commission from taking action with respect to holding an election

to fill the vacancy, regardless of any action that is taken by the Council. Act 123 authorizes a person appointed to the Council to serve until “the *next election of any kind* in which the voters of the city to which this Act applies are qualified electors...[.]” *Id.* (emphasis added). Although implicit, this provision confirms that the Commission may call an election to fill the council vacancy at the “next election of any kind” applicable to the qualified electors of the City of Birmingham.

Accordingly, although the Commission may not call an election for the sole purpose of filling a vacancy on the Council, once a vacancy occurs on the Council, regardless of whether the Council has chosen to appoint a person in the interim, the Election Commission may, in conjunction with any other election at which voters of the City of Birmingham are qualified electors, call an election to fill the vacancy in the office of city council. The person so elected would be authorized to serve the unexpired term of office.

CONCLUSION

Section 3.09 of Act 452, as amended by Act 123, permits the Election Commission to call an election to fill a vacancy on the Birmingham City Council, regardless of whether the Council has chosen to appoint a person in the interim to the Council. The Commission may call an election to fill a vacancy on the Council in conjunction with the next election of any kind. Any person so elected is authorized to serve the unexpired term of office for that city council position.

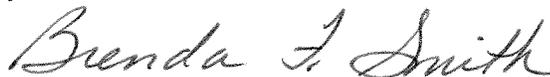
I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division