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February 28, 2014

Honorable John E. Enslen
Probate Judge of Elmore County
Post Office Box 10
Wetumpka, Alabama 36092

Probate Judges – Personnel Department – County Employees – Employees, Employers, Employment

The hiring procedure found in the Personnel Policies and Procedures Manual of Elmore County is in conflict with section 45-26-120.01 of the Code of Alabama.

Dear Judge Enslen:

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

QUESTIONS

Which takes priority, section 45-26-120.01 of the Code of Alabama or the Elmore County Commission's personnel policy? May the probate judge fill an existing budgeted clerk-position vacancy by appointment, or must the judge meet the requirements of the policy?

FACTS AND ANALYSIS

Your request states as follows:

> Beginning about May 2001, a Personnel Policies and Procedures Manual of Elmore County, adopted by the Elmore County Commission, required that any

> vacancy that occurred in existing clerking positions in the probate or other offices could not be fulfilled until there was (1) a duly passed resolution in a commission meeting to advertise for the vacant position; (2) a published notice advertisement for the position that ran in the newspaper for three consecutive weeks; (3) the passage of an additional week for the receipt of applications; (4) the completion of the interviewing process, if any; and (5) the selection of an applicant exclusively from the submitted applications.

Section 45-26-120.01 of the Code is a local act applicable to Elmore County providing for the appointment and compensation of employees for county officials. ALA. CODE § 45-26-120.01 (2011). It states as follows:

> The Elmore County Commission shall provide compensation for deputies, clerks, assistants, and secretaries for the offices of the judge of probate, tax assessor, tax collector, and sheriff in such number as may be necessary for the efficient conduct of such offices. Each officer shall appoint his or her own deputy, ***clerk***, secretary, and assistant and shall fix their compensation, ***subject to the approval of the county commission as to number and rate of pay***.

Id. (emphasis added).

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); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The plain language of this section grants authority to county officials to appoint employees without qualification. It limits the involvement of the county to the number and pay of employees and does not include the hiring process. Therefore, the probate judge need not meet the requirements of the county personnel policy to appoint a clerk.

This conclusion is supported by an opinion issued to Honorable J. Robert Faulk, Attorney, Autauga County Commission, dated July 6, 2001, A.G. No. 2001-217. That opinion considered the similar question of whether the Sheriff of Autauga County needed the permission of the county commission to advertise for and hire employees. The *Faulk* opinion construed virtually identical

language in a local act applicable to Autauga County providing for the employees of the sheriff. That opinion determined that the county must approve the number and pay of deputies, clerks, and assistants hired by the sheriff, but emphasized that the sheriff could hire them without the approval of the county.

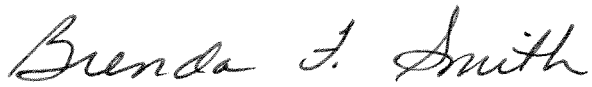
CONCLUSION

The hiring procedure found in the Personnel Policies and Procedures Manual of Elmore County is in conflict with section 45-26-120.01 of the Code.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



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