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STATE OF ALABAMA
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Honorable Tammy S. Cargile
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Alabama State Board of Veterinary
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Montgomery, Alabama 36130-5330

Veterinary Medical Examiners Board –
Hearings – Transcript – Boards – Quorum

A member of the Alabama State Board of
Veterinary Medical Examiners who is not
present at an administrative hearing may
vote on the matter if the member has read
the transcript of the hearing.

Dear Ms. Cargile:

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

QUESTION

If a member of the Alabama State Board of
Veterinary Medical Examiners misses testimony from
an administrative hearing, can the member read the
transcript from the hearing and still be able to vote on
the outcome?

FACTS AND ANALYSIS

Section 41-22-15 of the Alabama Administrative Procedure Act provides,
as follows, for the absence of an official from a hearing conducted by an
agency:

In a contested case, a majority of the officials of the agency who are to render the final order must be in accord for the decision of the agency to be a final decision. If any official of the agency who is to participate in the final decision **has not heard the case or read the record** and his vote would affect the final decision, the final decision shall not be made until a proposed order is prepared and an opportunity is afforded to each party adversely affected by the proposed order to file exceptions and present briefs and oral argument to the official **not having heard the case or read the record**. The proposed order shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision prepared by the person who conducted the hearing or one who read the record. The proposed order shall become the final decision of the agency without further proceedings, unless there are exceptions filed or an appeal to the agency within the time provided by rule. The parties by written stipulation may waive compliance with this section.

ALA. CODE § 41-22-15 (2013) (emphasis added).

The commentary to the statute explains that it is a codification of the following language in *Morgan v. United States*, 298 U.S. 468 (1936):

[T]o give the substance of the hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determination must consider and appraise the evidence which justifies them. 298 U.S. at 481-82. That duty cannot be performed by one who has not **considered evidence or argument**. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides **must hear**.

Id. cmt. (emphasis added).

This Office has addressed this issue with respect to a city board of education. Opinion to Honorable Billy R. Mills, Superintendent, Talladega City Schools, dated September 22, 1988, A.G. No. 88-00467. That opinion stated the general rule as follows:

As to whether a member who is not present at the hearing on a matter may later vote on the determination in the matter, it is the general consensus that the member can vote if he is familiar with and understands the evidence presented. The maxim that “[t]he one who decides *must hear*” is *not to be taken literally*. The maxim only means that the deciding officers must understand the evidence and *that may be done by reading summaries* prepared by a staff or consultants. Davis, Administrative Law Treatise, 2d.ed., § 17.2.

Id. at 2 (emphasis added). Therefore, the *Mills* opinion concluded that a member of the board of education who is not present at a hearing, but who has read the transcript of the hearing, may vote on the matter.

CONCLUSION

A member of the Alabama State Board of Veterinary Medical Examiners who is not present at an administrative hearing may vote on the matter if the member has read the transcript of the hearing.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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