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Honorable John F. Porter, III
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Education, Boards of – Vacancies – Employees, Employers, Employment – Notice – Jackson County

A county superintendent of education receiving a notice of separation from service from an employee may post the vacancy before separation under section 16-22-15 of the Code of Alabama.

Dear Mr. Porter:

This opinion of the Attorney General is issued in response to your request on behalf of the Jackson County Board of Education.

QUESTION

Does posting of vacancies by the county superintendent of education for vacancies that are anticipated, but where the employee has not vacated the position, violate section 16-22-15 of the Code of Alabama?

FACTS AND ANALYSIS

Your request states as follows:

> At various times during the school year, personnel of the Jackson County Board of Education ("Board") advise the Superintendent of Education that they intend to retire as of a

> certain date or that they have been offered another position beginning on a certain date, but in each case they do not intend to leave his or her current position until the anticipated date of retirement or beginning of the new job. Most often, these courtesy notices occur at or near the end of the year with the anticipated retirement date right before the beginning of the next school year. The superintendent has established a practice that is consistent with practices of numerous other superintendents in the state of posting those jobs when he receives the notice, but before the separation date. Each posting complies with the applicable seven-day or fourteen-day notice requirement. Each notice is posted at the various locations within the school system and on the websites for the Board and State Department of Education.

Section 16-22-15 of the Code of Alabama provides, as follows, for the posting of notice of vacancies for personnel positions for the boards of education :

> (b) Each board of education, through its executive officer, shall post a ***notice of vacancy for each vacant personnel position***. The notice shall be posted in a conspicuous place at each school campus and worksite at least 14 calendar days before the position is to be filled. The notice shall include, but not necessarily be limited to, all of the following:
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> (1) Job description and title.
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> (2) Required qualifications.
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> (3) Salary schedule and amount.
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> (4) Information on where to submit an application.
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> (5) Information on any deadlines for applying.

> (6) Any other relevant information.
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> (c) If a personnel vacancy occurs during the time when the schools are in session, the vacancy notice shall be posted not less than seven calendar days before the position is to be filled. All vacancies involving jobs which are supervisory, managerial, or otherwise newly created positions shall nevertheless require posting notices of at least 14 calendar days.
>
> (d) The board may adopt or continue policies which are not inconsistent with this section. The board may adopt policies to ensure the safety and welfare of its students during dire emergency situations, but the posting of a vacancy notice as required in this section shall not be abridged or delayed except in dire emergency circumstances and then delayed only temporarily in order to reasonably meet the conditions of the emergency. The adoption of additional policies shall comply with the requirements and procedures of section 16-1-30 by all boards defined in this section.

ALA. CODE § 16-22-15 (2012) (emphasis added).

Under the well-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); *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 statute does not define the term "vacancy." Nor is this language qualified. Therefore, the posting requirement applies equally whether the vacancy is anticipated or current.

This conclusion is supported by the common usage of "vacancy" in similar statutes throughout title 16. The language of the statute on the posting of notice of a vacancy for the State Superintendent of Education tracks the language of section 16-22-15. ALA. CODE § 16-4-1.1 (2012). In contrast to those statutes, the statutes on the posting of notice of vacancies for the county superintendent of education and the city superintendent of schools specifically provide that "***after*** the occurrence of a vacancy" the boards of education shall announce a "time-line for

posting and selecting a superintendent." ALA. CODE § 16-9-11 (2012) (emphasis added) (county superintendent); ALA. CODE § 16-12-1 (2012) (emphasis added) (city superintendent). If the Legislature had intended to limit posting for the boards of education until after the vacancy occurred, it would have used the same language regarding a vacancy in the superintendent statutes.

CONCLUSION

A county superintendent of education receiving a notice of separation from service from an employee may post the vacancy before separation under section 16-22-15 of the Code of Alabama.

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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