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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Robin Reynolds
Attorney, City of Dadeville
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Dadeville, Alabama 36853-1701

Municipalities – Water and Sewer Boards – Boards of Directors – Qualifications – Appointments –Tallapoosa County

An individual is required to be a qualified elector and a property owner within the City of Dadeville to be eligible to be a member of the Dadeville Water and Sewer Board ("Board").

Pursuant to Dadeville Ordinance 467, the Dadeville City Council may not nominate candidates to its Board.

Dear Mr. Reynolds:

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

QUESTION

(1) May an individual who is not a resident of the City of Dadeville serve on the Dadeville Water and Sewer Board?

FACTS AND ANALYSIS

The City of Dadeville incorporated a water and sewer board as a public corporation under section 11-50-310, *et seq.*, of the Code of Alabama. ALA. CODE §§ 11-50-310 to 11-50-324 (2008, Supp. 2013). In your letter of request, you informed this Office that one of the members of the Board was appointed while a resident of the city, but that member has since moved his residency to Auburn.

The applicable statutory provisions require that the original members of the Board be qualified electors and property owners within the City of Dadeville. ALA. CODE § 11-50-311 (2008). There is, however, no statutory requirement for current board members to be either property owners or qualified electors in the city. *See, generally*, opinion to Honorable William H. Dobbins, Jr., Mayor, City of Bay Minette, dated January 25, 2001, A.G. No. 2001-085. As such, you seek guidance regarding the proper interpretation to be given to your articles of incorporation.

In your request, you note a provision within the articles of incorporation that is of concern. This provision states that "[n]o person shall be eligible for membership on said board who is not a qualified elector of the City of Dadeville, Alabama, nor property owner within the corporate limits of the City of Dadeville." Dadeville Articles of Incorporation, Art. III, paragraph 3. Although the person still owns property in the city, you question whether this person is eligible to remain a board member because this person is no longer a resident or qualified elector of the City of Dadeville.

The term "nor" is "used to introduce the second member . . . of a series of two or more items of which each is negated." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1539 (3rd 2002). As used in your articles of incorporation, the term expresses two alternatives that must occur for a person to be a member of the Dadeville Water and Sewer Board. *See, generally*, William Strunk, Jr. and E.B. White, *Elements of Style* at 5, paragraph 4 (noting that the term "nor," when used in a two-part sentence acts as a conjunction in the sense of "and at the same time"). Written in the affirmative, your articles of incorporation state that a person is required to be a qualified elector and a property owner within the corporate limits of the City of Dadeville to be a member of the Board.

Based on the information provided to this Office, the person in question is no longer a qualified elector of the City of Dadeville. As such, it is the opinion of this Office that once a person ceases to be a qualified elector within the City of Dadeville that person may not be a member of the Dadeville Water and Sewer Board.

CONCLUSION

An individual is required to be a qualified elector and a property owner within the City of Dadeville to be eligible to be a member of the Dadeville Water and Sewer Board.

QUESTION

(2) When a city ordinance requires members of the water and sewer board to be nominated by the mayor and appointed by the council, may members of the council nominate members without the mayor?

FACTS AND ANALYSIS

Section 11-50-313 of the Code states that members of the board "shall be elected by the governing body of the municipality." ALA. CODE § 11-50-313 (Supp. 2013). Your request states that the city has established Ordinance 467, which provides that members of the municipal water and sewer board shall be nominated by the mayor and be approved by the city council.

Municipal ordinances are presumed to be valid unless or until they are declared invalid by a court of law. *Storer Cable Commc'ns v. City of Montgomery*, 806 F. Supp. 1518, 1549 (M.D. Ala. 1992); *Hurvich v. City of Birmingham*, 35 Ala. App. 341, 343, 46 So. 2d 577, 579 (1950). The municipal governing body of the city may amend or repeal the ordinance, but members of the council may not ignore an ordinance that is presumed to be valid. Accordingly, it is the opinion of this Office that, pursuant to the local ordinance, the Dadeville City Council may not nominate candidates to a municipal water and sewer board.

CONCLUSION

Pursuant to Dadeville Ordinance 467, the Dadeville City Council may not nominate candidates to its water and sewer board.

I hope this opinion answers your questions. 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

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