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Honorable Susan Franklin Wilhelm
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Dental Examiners, Board of – Boards of Directors – Term Limits – Elections

Although statutorily prohibited from serving consecutive terms, an individual appointed by the Board of Dental Examiners to complete an unexpired term to which a prior member was elected may serve an additional full term.

Dear Ms. Wilhelm:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Dental Examiners of Alabama.

QUESTION

In the event the Board of Dental Examiners of Alabama ("Board") appoints a successor to serve the remainder of a term, can the successor thereafter serve an additional elected term as a member of the Board?

FACTS AND ANALYSIS

The statute governing the Board is found in section 34-9-40 of the Code of Alabama. The Board is composed of elected members who serve five-year terms. ALA. CODE § 34-9-40(a) (Supp. 2013). In the event of a vacancy during a term, the Board appoints a past member to serve the remainder of the

incomplete term. *Id.* Section 34-9-40(a) of the Code limits the ability of a board member to serve successive terms and states, in pertinent part, as follows:

> Every member elected shall hold office for a period of five years, which terms shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and until his or her successor is elected and qualified, and ***the member so elected shall not at the expiration of the term be eligible to succeed himself or herself.***

ALA. CODE § 34-9-40(a) (Supp. 2013) (emphasis added).

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). Thus, the plain language of section 34-9-40(a) of the Code only imposes term limits upon those members who are "elected." If the Legislature had intended to apply this prohibition to all members, including those appointed to partial terms, it would not have expressly limited the prohibition to "members so elected."

This interpretation is consistent with previous opinions of this Office. In an opinion to Honorable James K. Lyons, this Office was asked to interpret section 33-1-8(b)(1) of the Code governing the appointment of members of the Alabama State Port Authority. Opinion to Honorable James K. Lyons, Director, Alabama State Port Authority, dated August 16, 2006, A.G. No. 2006-131. There, the statute in question prohibited individuals from serving more than two consecutive five-year terms. When a position on the Port Authority became vacant during a term, the Governor appointed a member to fill the remainder of the unfinished term. The Port Authority requested an opinion on whether an individual who had served a partial term was eligible to serve two additional full terms.

The *Lyons* opinion, citing prior opinions, concluded the following:

> Although section 34-22-40 has never been interpreted by the courts, Alabama courts have considered a provision similar to it on at least one occasion. In Black v. Pate, the Alabama Supreme Court considered section 26 of article 5 of the Alabama Constitution which, at that time, provided: "[a] sheriff

> shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of four years, unless sooner removed, and shall be ineligible to such office as his own successor." ALA. CONST. art. V, § 26 (1875). In construing this language, the Court concluded: "[w]ithout an unwarranted extension of its terms, this provision cannot be made to include, or to render ineligible to succeed himself, one who has held the sheriff's office only by appointment for a fractional term." Black v. Pate, 30 So. 434, 440 (Ala. 1901).
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> Applying this same reasoning, the language in section 34-22-40, which is similar to that under consideration in Black v. Pate, a person who holds membership on the Board "only by appointment for a fractional term" may be re-appointed to serve two, additional, consecutive terms on the Board.

Opinion to Honorable James K. Lyons, Alabama Port Authority, dated August 16, 2006, A.G. No. 06-00131 at 2, *quoting* opinion to Honorable Robert D. Segall, Attorney, Board of Optometry, dated June 1, 1999, A.G. No. 99-00211. The same reasoning and conclusion are applicable to the question at hand.

Indeed, the statutory provisions at issue in *Lyons* and *Segall* were ambiguous and lacked the clarity of the express language of section 34-9-40(a) of the Code. Section 33-1-8(b)(1) of the Code, discussed in *Lyons*, stated that "[n]o person may serve more than two consecutive terms." ALA. CODE § 33-1-8(b)(1) (2003); *Lyons* at 2. Section 34-22-40(d) of the Code, addressed in *Segall*, provided that "no person may serve more than two consecutive terms on the board." ALA. CODE § 34-22-40(d) (2010); *Segall* at 1. In neither instance did those statutory provisions specifically limit their application to members who had served a full term. They simply prohibited any person from serving more than two consecutive terms and did not address the issue of partial terms. By contrast, the language of section of section 34-9-40(a) of the Code is expressly limited to "members so elected."

CONCLUSION

Although statutorily prohibited from serving consecutive terms, an individual appointed by the Board of Dental Examiners to complete an unexpired term to which a prior member was elected may serve an additional full term.

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

Sincerely,

LUTHER STRANGE
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By:

BRENDA F. SMITH
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