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STATE OF ALABAMA
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Honorable Tim Mitchell
Marshall County Probate Judge
424 Blount Avenue, Suite 110
Guntersville, Alabama 35976

Education, Boards of – Elections –
Probate Judges – Grandfather
Provisions – School Districts

A member of the Marshall County Board of Education, after passage of Act 2012-324, may not seek reelection in a district in which he does not live, even though the member was elected and serving in the position prior to the passage of the act.

Dear Judge Mitchell:

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

QUESTION

May a member of the Marshall County Board of Education, after passage of Act 2012-324, seek reelection in a district in which he does not live since he was elected and serving in the said position prior to the passage of the act?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that questions have arisen regarding the ability of a member of the Marshall County Board of Education to seek reelection in a district in which he does not

currently reside. Since being elected to the position, Act 2012-324 was signed into law. This particular provision established the election of members of the county board of education from four districts within the Marshall County School system. In a subsequent telephone conversation, you informed this Office that this is not the first election since Act 2012-324 became effective. Districts 2, 3, and the at-large position have been properly elected pursuant to Act 2012-324, and these districts are currently represented. Districts 1 and 4 are currently up for election.

You seek guidance regarding whether this incumbent board member may now run for the District 1 position when this board member does not reside in that district. Alternatively, you question whether this board member is “grandfathered” in and may run for reelection in District 1, since the board member was serving in the position at the time of the passage of the act.

Act 2012-324 states, in pertinent part, as follows:

(2) The Marshall County Board of Education shall be composed of five members. ***Four of the members shall be residents of and represent one of each of four separate districts within the Marshall County school system and shall be elected pursuant to section (b) by a majority of the qualified electors of the Marshall County school system voting in the election. One of the members may reside anywhere within the Marshall County school system and shall be elected pursuant to subsection (c) by a majority of the qualified electors of the Marshall County school system voting in the election. . . .***

(b) Districts.

(1) The area known as the Marshall County school system and served by ***the Marshall County Board of Education shall be divided by the board into four districts.*** The initial boundaries of the districts shall be based upon a map drawn by the board and filed in the Office of the Judge of Probate of Marshall County by the members of the board. The

separate districts shall be known as and shall include the following schools:

- a. District 1, Ashbury.
- b. District 2, Douglas.
- c. District 3, Brindlee Mountain.
- d. District 4, DAR.

(2) *As the terms of current board members expire, members shall be elected to the board to represent those districts without representation on the board. If more than one of those districts is without representation on the board, the board shall designate from which district or districts successor board members shall be elected. In designating the sequence of election of members from the districts, the board shall endeavor to have representation from each of the four districts as soon as is practicable. After each district is represented on the board, any successor district member elected to the board shall be a resident of the district of the member whose term is expiring.*

(3) A candidate for election as a district member of the board shall be a resident of the district which he or she seeks to represent on the board for at least 90 consecutive days immediately preceding the deadline date for qualifying as a candidate, and shall reside in that district during his or her entire term of office.

....

(d) The election to elect the district members and the at-large member of the board as provided by this act shall be held at a time that corresponds to the election cycle used for the members of the board on the effective date of this act.

....

(g) If the boundaries of a district change, or *if redistricting places an incumbent board member outside of his or her district, the member shall nevertheless continue to serve the remainder of the term to which he or she was elected.*

.....

Section 3. The provisions of this act shall not apply to the individuals who are currently serving as members of the Marshall County Board of Education.

2012 Ala. Acts No. 2012-324, 754 (emphasis added).

The purpose of Act 2012-324 is to transform the Marshall County Board of Education from a board whose membership were all at-large to a board whose membership represented specific districts and contained only one at-large member. In your inquiry, it appears that you are interpreting section 3 of Act 2012-324 as a grandfather clause. A grandfather clause is “a provision that creates an exemption from the law’s effect for something that existed before the law’s effective date.” BLACK’S LAW DICTIONARY 814 (10th ed. 2014). Section 3 of Act 2012-324 authorizes persons serving at the time of enactment to continue serving. What is now questioned, however, is whether section 3 should be interpreted as permitting such persons to serve in perpetuity on the board.

In interpreting statutes, the plain language of a statute controls, except in those rare cases in which a literal interpretation would produce results demonstrably at odds with the intention of the drafters. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989). Stated differently, a literal interpretation that would defeat the purposes of a statute will not be adopted if any other reasonable construction can be given. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

In this matter, members of the Marshall County Board of Education are elected to six-year terms of office. This Office was informed that there are no limits to the number of terms a person may seek. As such, section 3 would arguably authorize a person who was in office at the time the legislation passed to remain in office forever. Such an understanding would be contrary to the purpose and the plain language of the act. 2012 Ala. Acts No. 2012-324, 754 (Sec. (b)(2) stating that as the terms of

members expire new members are to be elected to represent the districts and that the board shall endeavor to have representation from each of the four districts as soon as is practicable; and subsection (g) stating that an incumbent serving outside of his district may serve the remainder of the term).

Previously, in analyzing grandfather clauses, this Office has noted the following:

Grandfather clauses serve to avoid hardships that might be suffered by those who are engaged in an activity that was well established before the law's enactment. They do not create rights, but rather prevent an entity or individual from being altered or imposed upon by a new statute. In construing an exemption or grandfather clause in relation to an act's general provisions, courts will generally construe the exemption in a manner that will not frustrate the purpose of the general provisions it purports to restrict.

Opinion to Honorable Joe McInnes, Director, Alabama Department of Transportation, dated April 12, 2004, A.G. No. 2004-119 (internal citations omitted).

Construing the act as a whole, it is the opinion of this Office that the Legislature intended for Act 2012-324 to exempt members of the Marshall County Board of Education who were in office at the time of the act's passage only for the duration of that board member's current term of office. The exemption was not intended to provide an exhaustive allowance that would hinder, strain, or frustrate the possibility of member-district representation on the school board.

CONCLUSION

A member of the Marshall County Board of Education, after passage of Act 2012-324, may not seek reelection in a district in which he does not live, even though the member was elected and serving in the position prior to the passage of the act.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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