

86-00057

# OFFICE OF THE ATTORNEY GENERAL



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Honorable William G. Hause  
City Attorney  
City of Dothan  
P. O. Box 1469  
Dothan, AL 36302

Municipalities - Planning  
Commission - Officers & Offices

Structure of a Planning  
Commission pursuant to Act 85-927  
discussed.

Dear Mr. Hause:

The opinion request of the City of Dothan has been received in the Office of the Attorney General.

It is apparent from the outset that Act 85-927 is so poorly drafted as to make it very difficult for this office to render an opinion. While this office presumes acts of the legislature to be constitutional until held to be otherwise by a court of competent jurisdiction, the conflicting and ambiguous provisions of Act 85-927 raise serious questions about the constitutionality of the Act. However, in order to be of service to you we will discuss the questions presented in your opinion request.

Your first and second questions relate to appeals from decisions of the Planning Commission. The short title of Act 85-927 states that "appeals from the planning commission shall be directly to the circuit court." Section 2 of the Act, provides that after appeal to the governing body of the municipality the next stage of appeal is to the circuit court. As stated above, acts of the legislature are presumed by this office to be constitutional until declared otherwise by a court of competent jurisdiction.

In order to pass muster under Constitution of Alabama 1901, §45, Act 85-927 must be interpreted so that subjects in the title prevail. Therefore, it is the opinion of this office that if the City of Dothan elects to come under the provisions of Act 85-927, appeals from the Planning Commission are to be made directly to the circuit court until determined otherwise by a court of competent jurisdiction.

Your third question reads, in part, as follows:

- (3)(a) How appointments to the Planning Commission should be conducted.
- (b) The terms of office of each Commissioner.
- (c) How are vacancies on the Commission filled under the Act?
- (d) How are alternate Members appointed under the Act; and does the Mayor have authority to nominate an alternate?
- (e) The City of Dothan appointed a Planning Commission under Section 11-52-3, Code of Alabama 1975. Did House Bill #176 vacate the term of the previously appointed Commissioners?

By the terms of the Act, eight members of the Planning Commission are to be appointed by the governing body and are to represent as equally as possible the several districts or wards of the municipality as determined by the governing body. One member is to be appointed by the mayor or chief executive officer of the municipality.

The terms of office of each Commissioner appear to be indefinite, since the Act provides that the eight appointees of the governing body serve "at the pleasure of the governing body" and the mayor's appointee serves "at his pleasure."

As to the filling of vacancies, Section 1 of Act 85-927 states:

Each member of the governing body excluding the mayor or chief executive officer shall nominate persons to fill two vacancies on said commission within two (2) months after

the vacancy occurs. Failure to do so shall result in the vacancy being filled by the governing body without said nomination.

It appears that the only workable interpretation of this language is to permit each member of the governing body, other than the mayor or chief executive officer to make up to two nominations to fill vacancies in those positions appointed by the governing body within two months after they occur. However, the governing body may fill such vacancy at the expiration of the two month period even if members of the governing body have failed to make nominations. The Act is silent with regard to a vacancy in the position appointed by the mayor. However, since the person in that position serves at the pleasure of the mayor, the mayor should fill that vacancy.

Section 1 provides for the nomination of alternate members in the following language:

In addition, each member of the governing body shall nominate an alternate member of the commission subject to the approval of the governing body. The powers and duties of the alternate members shall be prescribed by the governing body. Alternate members shall serve at the pleasure of the governing body.

The mayor is not specifically excluded here as a member of the governing body. The governing body of the City of Dothan consists of a mayor and four commissioners. (Act 79-537) Therefore, it would appear that up to five alternates may be nominated.

Your final question relates to the vacation of terms of the incumbent members of the Planning Commission. Their terms were not automatically vacated by the enactment of Act 85-927. Act 85-927 is a permissive one. However, in enacting this legislation, the legislature has, as of the date in which any Class 5 municipality chooses to become organized under its provisions, ended the terms of the incumbents.

Your fourth question is stated as follows:

The Act purports to amend only Section 11-52-3, Code of Alabama 1975. Please advise if all of the other Sections of Chapter 52, Article 1, are applicable to Act #176 as it affects the powers and duties, rules of procedure, appointments and other related purposes of the Planning Commission.

The Act in question does not amend Code of Alabama 1975, § 11-52-3. It provides an alternate procedure for the structure of a planning commission previously created under Section 11-52-3. All portions of Title 11, Chapter 52 not in conflict with Act 85-927 remain in full force and effect even if the governing body of a Class 5 municipality adopts the alternate procedure.

Your final question is:

Is the Act unconstitutional on the ground that it is vague, indefinite and uncertain; fails to fairly apprise of the subject of the bill? Constitution of Alabama IV, Section 45.

It is the position of this office that acts of the legislature are presumed to be constitutional until declared otherwise by a court of competent jurisdiction, but as previously noted the ambiguity and conflict of this Act raises serious questions regarding the constitutionality of the Act.

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General

By:



CAROL JEAN SMITH  
Assistant Attorney General