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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

May 5, 2004

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ATTORNEY GENERAL

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Honorable Alfred Q. Booth  
Autauga County Judge of Probate  
176 West 5th Street  
Prattville, Alabama 36067

Probate Judges – Candidates – State  
Employees – County Commissioners

A state employee may be a candidate for county commissioner while employed by the State, but must be off duty or on approved leave to engage in political activities. A state employee must comply with the restrictions imposed by sections 17-1-7, 36-26-38, 36-12-61, and 36-12-62 of the Code of Alabama.

Dear Judge Booth:

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

QUESTION

May a state employee, employed with the Alabama Department of Revenue, run for the office of county commissioner in Autauga County while employed with the State?

FACTS AND ANALYSIS

The rights of city, county, and state employees to participate in political activities is set forth in section 17-1-7 of the Code of Alabama, which states, in pertinent part, as follows:

(a)(3) No person in the employment of the State of Alabama, whether classified or unclassified, shall be denied the right to participate in city, county, or state political activities to the same extent as any other citizen of the State of Alabama, including endorsing candidates and contributing to campaigns of his or her choosing. Notwithstanding the foregoing, any person within the classified service shall comply with Section 36-26-38.

(4) All persons in the employment of any city, county, or state shall have the right to join local political clubs and organizations, and state or national political parties.

(5) All persons in the employment of any city, county, or state shall have the right to publicly support issues of public welfare, circulate petitions calling for or in support of referendums, and contribute freely to those of his or her choosing.

(b) No person shall attempt to use his or her official authority or position for the purpose of influencing the vote or political action of any person. Any person who violates this subsection (b) shall be guilty of a felony and punishable by a fine not to exceed ten thousand dollars (\$10,000) or imprisonment in the state penitentiary for a period not to exceed two years, or both.

(c) No person in the employment of the State of Alabama, a county, or a city whether classified or unclassified, shall use any state, county, or city funds, property or time, for any political activities. Any person who is in the employment of the State of Alabama, a county, or a city shall be on approved leave to engage in political action or the person shall be on personal time before or after work and on holidays. It shall be unlawful for any officer or employee to solicit any type of political campaign contributions from other employees who work for the officer or employee in a subordinate capacity. It shall also be unlawful for any officer or

employee to coerce or attempt to coerce any subordinate employee to work in any capacity in any political campaign or cause. Any person who violates this section shall be guilty of the crime of trading in public office and upon conviction thereof, shall be fined or sentenced, or both, as provided by Section 13A-10-63.

ALA. CODE § 17-1-7 (1995). This section allows state employees to seek public office on their own time, either while off duty or on approved leave. An officer or employee shall not solicit campaign contributions from other employees who work for the officer or employee in a subordinate capacity and shall not coerce or attempt to coerce any subordinate employee to work in any capacity in any political campaign or cause. *See* Opinions to Honorable Larry Dixon, State Senator, dated July 1, 1986, A.G. No. 86-00280; to Honorable Albert McDonald, Commissioner, Department of Agriculture and Industries, dated April 22, 1986, A.G. No. 86-00228; and to Honorable Steve Hettinger, Member House of Representatives, dated July 20, 1984, A.G. No. 84-00369.

A state employee must also comply with the provisions of section 36-26-38 concerning the State Personnel Department and the State Merit System. This section states as follows:

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations. No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service or an increase in pay or other advantage in employment in any such position for the purpose of influencing the vote or political action of any person or for any consideration. No employee in the classified service and no member of the board shall, directly or indirectly, pay or promise to pay any assessment,

subscription or contribution for any political organization or purpose or solicit or take any part in soliciting any such assessment, subscription or contribution under coercion; provided, however, it shall be unlawful for any officer or employee to solicit any type political campaign contributions from other employees who work for said officer or employee in a subordinate capacity. No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except on his personal time and to exercise his right as a citizen privately to express his opinion and to cast his vote; provided, however, that nothing in this section shall prohibit any person in the classified service from serving out the term of a party office which he had been elected at the time this chapter goes into effect. Any employee in the classified service may engage in political action or political activities on personal time before and after work, holidays and during approved leave.

(b) Any officer or employee in the classified service who violates any of the foregoing provisions of this section shall forfeit his office or position.

ALA. CODE § 36-26-38 (2001).

A state employee is also subject to the specific restrictions imposed in sections 36-12-61 and 36-12-62 of the Code of Alabama, which state, respectively, as follows:

It shall be unlawful for any officer or employee of the State of Alabama to use or to permit to be used any state-owned property of any character or description, including stationery, stamps, office equipment, office supplies, automobiles or any other property used by him, in his custody or under his control for the promotion or advancement of the interest of any candidate for

the nomination or election to any public office of the State of Alabama.

ALA. CODE § 36-12-61 (2001).

It shall be unlawful for any officer or employee of the State of Alabama to transport, cause to be transported or to allow to be transported in any automobile or other vehicle belonging to the state or any privately owned vehicle while mileage is paid by the state any campaign literature or propaganda which promotes or tends to promote his candidacy or the candidacy of any other person for the nomination or election to any office of the State of Alabama.

ALA. CODE § 36-12-62 (2001).

Sections 36-26-38 and 17-1-7 of the Code of Alabama allow a state employee to run for an elective office while employed by the State and off duty or on approved leave. A state employee may not use state property or time for political purposes. A state employee may not use his or her position to coerce or attempt to coerce subordinate employees to give money or otherwise support the employee's political activities.

This opinion does not address any possible implications of the federal Hatch Act restricting partisan political activity by individuals employed by state or local agencies whose principal employment is in connection with programs financed, in whole or in part, by federal loans or grants. 5 U.S.C. § 1501 (West 2003).

#### CONCLUSION

A state employee may be a candidate for county commissioner while employed by the State, but must be off duty or on approved leave to engage in political activities. A state employee must comply with the restrictions imposed by sections 17-1-7, 36-26-38, 36-12-61, and 36-12-62 of the Code of Alabama.


Honorable Alfred Q. Booth  
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING  
Attorney General

By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive style with a large initial "C" and "S".

CAROL JEAN SMITH  
Chief, Opinions Division

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