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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Michael F. Bolin
Probate Judge
Probate Court of Jefferson County
716 North 21st Street
Birmingham, Alabama 35263-0068

Help America Vote Act of 2002 -
Probate Judges - Election Officials -
Candidates

The probate judge, the circuit clerk, and the sheriff may perform all the election duties set forth in the Code of Alabama unless the Code specifically prohibits the performance of this duty when the official is a candidate in the election. Section 17-1-8 of the Code of Alabama does not require the probate judge to disqualify himself or herself from serving on the canvassing board or from performing any other election duties when the probate judge is a candidate. A probate judge may, however, voluntarily disqualify himself or herself from performing certain election-related duties.

Dear Judge Bolin:

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

QUESTION

Does the language in section 17-1-8(b) of the Code of Alabama change the conclusion in the opinion to Honorable Jim Bennett, Secretary of State, dated October 22, 1993, A.G. No. 94-00026, regarding the duties that may be performed by the probate judge, the circuit clerk,

and the sheriff when any one of the three is a candidate for elective office and his or her name appears on the ballot?

FACTS AND ANALYSIS

This Office stated in the *Bennett* opinion that the probate judge, the circuit clerk, and the sheriff may perform all the election duties set forth in the Code of Alabama unless the Code of Alabama specifically prohibits the performance of this duty when the official is a candidate in the election. Opinion to Honorable Jim Bennett, Secretary of State, dated October 22, 1993, A.G. No. 94-00026. That opinion also stated that a county official may voluntarily disqualify himself or herself from performing certain election duties if the candidate feels his or her candidacy would be or would appear to be a conflict of interest. *Id* at 3.

The *Bennett* opinion specifically discussed the ineligibility of the members of the appointing board. The appointing board, consisting of the probate judge, the sheriff, and the circuit clerk, appoint the election officials for the respective voting places in the county. ALA. CODE § 17-6-1 (1995). Section 17-6-3 provides, in pertinent part, as follows:

When the judge of probate, sheriff or clerk of the circuit court is a candidate for election to any office at that election, he shall not serve on the appointing board. The judge of probate shall certify to the clerk or register of the circuit court the fact of the candidacy of any member of the appointing board immediately after the certificate of nomination, or petition, as provided in Section 17-7-1, is filed with him.

ALA. CODE § 17-6-3 (1995).

An ineligible member is replaced under section 17-6-4 of the Code of Alabama, which states, as follows:

Upon receiving the certificate provided for in Section 17-6-3, the clerk or register of the circuit court shall forthwith and without delay appoint a qualified elector to take the place of each member of the appointing board who is a candidate for election, and shall cause the elector so appointed to be informed of his appointment;

but no person shall be appointed who is a candidate for any office to be voted for in that election.

Any person serving as a member of the appointing board shall receive \$4.00 for such service.

The person so appointed shall perform all the duties and be vested with all the powers of the regular members of the appointing board, and shall take an oath to faithfully perform his duties.

ALA. CODE § 17-6-4 (1995).

These provisions of the Code of Alabama have not been amended since the *Bennett* opinion was issued. Your request refers to section 17-1-8(b) of the Code of Alabama. Section 17-1-8 was added as a new section to the Code of Alabama effective June 19, 2003, as part of Act 2003-313, the Alabama implementation of the Help America Vote Act of 2002. 2003 Ala. Acts No. 2003-313. Section 17-1-8 states as follows:

(a) The Secretary of State is the chief elections official in the state and shall provide uniform guidance for election activities. The Secretary of State is granted rule making authority for the implementation of Act 2003-313 under the Alabama Administrative Procedure Act.

(b) *The judge of probate is the chief elections official of the county and shall serve as chair of the canvassing board.*

ALA. CODE § 17-1-8 (Supp. 2003) (emphasis added).

The canvassing board for county elections is also composed of the probate judge, the sheriff, and the circuit clerk. ALA. CODE § 17-14-1 (1995). Nothing in section 17-14-1, nor any other provision of the Code, requires a member of the canvassing board to disqualify himself or herself from performing duties with respect to canvassing the election if a member of the canvassing board is a candidate in that election.

Section 17-1-8(b) states that the probate judge is the chief elections official for the county. This section also provides that the probate judge serves as the chair of the canvassing board. Before this provision was

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added to the Code, it was generally understood that the probate judge was the chief elections official for the county. This provision officially gives the probate judge this designation. Before this provision was added, there was no designated chair of the canvassing board. This provision designates the probate judge to serve as the chair of the canvassing board. Nothing in this section requires the probate judge to disqualify himself or herself from serving on the canvassing board or from performing any other election-related duties if the probate judge is a candidate in the election. The addition of this section to the Code of Alabama does not change the conclusion reached in the *Bennett* opinion. Accordingly, the probate judge may perform all the election duties set forth in the Code of Alabama unless the Code specifically prohibits the performance of this duty when the probate judge is a candidate in the election.

CONCLUSION

The probate judge, the circuit clerk, and the sheriff may perform all the election duties set forth in the Code of Alabama unless the Code specifically prohibits the performance of this duty when the official is a candidate in the election. Section 17-1-8 of the Code of Alabama does not require the probate judge to disqualify himself or herself from serving on the canvassing board or from performing any other election duties when the probate judge is a candidate. A probate judge may, however, voluntarily disqualify himself or herself from performing certain election-related duties.

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:



CAROL JEAN SMITH
Chief, Opinions Division

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