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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Jerry C. Pow
Bibb County Judge of Probate
Suite A
8 Court Square, West
Centreville, Alabama 35042

County Commissioners - Public
Offices - Probate Judges

One member of a county commission may serve on a public board, commission, or authority if service on the county commission and the board does not violate section 280 of the Alabama Constitution. A county commissioner may not serve on the board of a health care entity organized under chapter 21 of title 22 unless the articles of incorporation of the health care entity authorize a county commissioner to serve on the board.

Dear Judge Pow:

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

QUESTION

May a county commissioner serve on a local board appointed by the Bibb County Commission, such as a hospital board, IDA (industrial development authority) board, water and sewer board, or library board?

FACTS AND ANALYSIS

Section 11-3-2 of the Code of Alabama establishes the eligibility of county commissioners to serve on public boards and states as follows:

(a) Subject to the restrictions of Section 280 of the Constitution of Alabama of 1901, and the laws of this state, *one member of a county commission may be appointed to and may serve on public boards, commissions, and authorities within this state unless authorized by law.* Notwithstanding the foregoing, this subsection shall not be interpreted to authorize a county commission to appoint a member to serve on the board of any authority, corporation, or association organized pursuant to Chapter 21 of Title 22 unless the appointment is authorized in the articles of incorporation of the authority, corporation, or association.

(b) All service on a board, commission, or authority by a member of a county commission prior to December 7, 1999, meeting the requirements of subsection (a) and all actions taken by any member of a county commission acting in his or her official capacity on the board, commission, or authority are ratified and confirmed.

(c) A member of a county commission shall not be reimbursed for expenses by the public board, commission, authority, and the county commission on which he or she serves, however, the member may elect to be reimbursed from either the public board, commission, authority, or the county commission.

ALA. CODE § 11-3-2 (Supp. 2003) (emphasis added). This section allows one member of a county commission to serve on a public board, commission, or authority as long as section 280 of the Alabama Constitution is not violated.

Section 280 of the Constitution of Alabama prohibits an individual from occupying two positions of profit at the same time. It provides as follows:

No person holding an office of profit under the United States . . . shall, during his continuance in office, hold any office of profit under this state; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state

ALA. CONST. art. XVII, § 280.

The Alabama Supreme Court has determined that a position or an office is an "office of profit" if: (1) the office holder exercises some part of the sovereign power of the State, and (2) compensation is to be received for the performance of the duties of the office. *See Opinion of the Justices No. 64, 244 Ala. 386, 13 So. 2d 674 (1943)*. This Office has previously stated that a county commissioner holds an office of profit. *Opinion to Honorable Allen C. Jones, Attorney, Pike County Commission, dated July 28, 1999, A.G. No. 99-00260.*

Whether a member of a particular board holds an office of profit depends upon the type of board involved and whether the board member exercises some part of the sovereign power of the State and is entitled to compensation for service as a board member. If membership on a particular board constitutes an office of profit, the county commissioner may not serve on that board while serving as a county commissioner. This Office cannot address whether a county commissioner would violate section 280 by serving as a member of a particular board without additional information concerning the board.

Section 11-3-2 also prohibits a county commissioner from serving on the board of any authority, corporation, or association organized under chapter 21 of title 22 unless the appointment is authorized by the articles of incorporation of the authority, corporation, or association. Chapter 21 of title 22 relates to hospital and health care authorities and corporations. Thus, a county commissioner may also serve as a member of a health care authority or corporation organized under chapter 21 of title 22 if the articles of incorporation of the health care entity authorize a county commissioner to serve on the board.

CONCLUSION

One member of a county commission may serve on a public board, commission, or authority if service on the county commission and the board does not violate section 280 of the Alabama Constitution. A county commissioner may not serve on the board of a health care entity organized under chapter 21 of title 22 unless the articles of incorporation of the health care entity authorize a county commissioner to serve on the board.

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

Sincerely,

TROY KING
Attorney General

By:



CAROL JEAN SMITH
Chief, Opinions Division

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