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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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County Commissions – General Laws
– Local Laws - Morgan County

General laws dealing with a specific subject do not automatically repeal local laws dealing with the same subject in the absence of express language. For a general law to impliedly repeal a local law, there must be a plain indication of the Legislature's intent to repeal the earlier law and irreconcilability between the general law and the local law.

It is the opinion of this Office that a court would find Act 2004-384 does not repeal Act 129 by implication. A determination of whether Act 2004-384 subsumes Act 129 must be made by the courts, as specified in section 105 of the Constitution of Alabama, but it is the opinion of this Office that a court would find that Act 2004-384 subsumes Act 129 with respect to meeting schedules.

If a court determines that Act 2004-384 subsumes or repeals Act 129, the Morgan County Commission has the authority to establish a meeting schedule, as necessary, before the

November 2004 election of commissioners, but must establish its regular meeting schedule at the first meeting following each election of the county commissioners.

Dear Mr. Shinn:

This opinion of the Attorney General is issued in response to your request on behalf of the Morgan County Commission.

QUESTIONS

Does Act 2004-384 have the effect of repealing, subsuming, or otherwise supplanting the provisions of longstanding Morgan County local laws dealing with the same subject?

If it is concluded that Act 2004-384 is applicable to the Morgan County Commission, does the Commission have the authority under Act 2004-384 to establish its own regular meeting schedule before its first meeting following the November 2004 election of commissioners?

FACTS AND ANALYSIS

Your questions deal with the effect of subsequent general laws upon longstanding Morgan County local laws. Section 110 of the Constitution of Alabama, as amended by Amendment 397, defines a general law as "a law which in its terms and effect applies either to the whole state, or to one or more municipalities of the state less than the whole in a class." ALA. CONST. amend. 397. A general law affects all the people of the state or all the people of a particular class. See Opinion of Attorney General to Honorable Jim Woodward, Jefferson County Sheriff, dated June 7, 2000, A.G. No. 2000-163. A local law is defined in Amendment 397 as "a law which is not a general law or a special law or a private law." ALA. CONST. amend. 397. The local law in question here is Act 129 (1939) ("Act 129"), as amended by Act 774 (1975) ("Act 774"). Your request provides the following information:

The Morgan County Commission (“the Commission”) was created by Act 129 of the 1939 Legislature. Section 3 of Act 129 provided that the Board [now the County Commission] “shall hold regular meetings at the Court House of said county beginning at 10:00 A.M. on the second and fourth Monday of each month . . .” 1939 Ala. Acts No. 129, p. 70. Pursuant to that command, the Commission has held regular meetings at 10:00 A.M. on the second and fourth Mondays for the past 65 years. In the same legislative session, the Legislature enacted Act 577 [a general law], which dealt with the subject matter of regular terms for the court of county commissioner, in these words:

Regular terms of the court are held on the second Mondays in each month of each year. Provided however, that the provisions of this act shall not apply to any county of this state having a population according to the last or any subsequent census of 50,000 or more. Provided, further, that this Act shall not operate to repeal any local law affecting any county with respect to the matters contained in this act.

1939 Ala. Acts No. 577, p. 932. Act 577 was later codified in the Code of Alabama of 1940 as Title 12, Section 9, but the local law and subsequent census provisos were omitted. It was also later codified in the Code of Alabama 1975 as section 11-3-8, and the local law and subsequent census provisos were likewise omitted.

Section 11-3-8 was amended in 2004 by Act 2004-384 (“Act 2004-384”), the general law in question here. Before amendment, section 11-3-8 stated that county commissions would have regular meetings on the second Monday of each month. Act 2004-384 grants power to the county

commissions to set their own meeting schedules. Your letter also provides as follows:

Act 2004-384 divided section 11-3-8 into three subsections. Subsection (a) requires the county commission to establish its regular meeting schedule at its first meeting following the election of the county commission. It also authorizes the county commission, by resolution, to alter its regular meeting days as necessary and requires the regular meeting days and the time and place where the meeting will be held to be posted in a public and conspicuous location in the courthouse and in other public buildings . . . Subsection (b) of amended section 11-3-8 addresses the issue of special meetings and authorizes such special meetings to be held when determined necessary in writing by a majority of the members of the commission, or in case of an emergency, upon call of the chair . . . Subsection (c) of amended section 11-3-8 deals with the issue of what happens when the regular meeting day falls on a legal public holiday.

This Office has previously issued opinions stating our position that “a general law dealing with a specific subject is not to be construed as repealing a local law dealing with the same subject.” *See* Opinion of the Attorney General to Honorable Freda P. Roberts, Mobile County Revenue Commissioner, dated June 14, 1991, A.G. No. 91-00301. In the absence of express language indicating an intention to repeal, it is possible for one act to repeal another by implication, but the threshold for such repeal is high. To determine whether a statute impliedly repeals another, the intent of the enacting legislation must be determined. A.G. No. 91-00301. In *Day v. Morgan County Comm’n*, the Alabama Supreme Court held that there must be “a **plain indication of [the Legislature’s] intent** that the general act shall repeal the special act,” either express or implied. 487 So. 2d 856 (Ala. 1986) (emphasis added). Another Alabama Supreme Court case suggests that there must be “irreconcilability” between the acts to declare that one act impliedly repeals the other. *See City of Tuscaloosa v. Alabama Retail Ass’n*, 466 So. 2d 103 (Ala. 1985). After examining the language of Act 2004-384, it is not clear that the Legislature intended to repeal Act 129, as amended by Act 774, through implication. Because Act

2004-384 and amended Act 129 do not appear irreconcilable and there is no plain indication that the Legislature intended that one act repeal the other, it is the opinion of this Office that a court would find that Act 2004-384 does not meet the threshold for repeal by implication.

Although it appears that Act 2004-384 does not repeal amended Act 129 by implication, your opinion request suggests the possibility that the general act subsumes the local act. Section 105 of the Constitution of Alabama specifically states that it is the courts that shall decide whether a general law subsumes a local law. Although the final disposition of this issue would rest with a court of competent jurisdiction, it is the opinion of this Office that a court would find that Act 2004-384 does subsume Act 129, as amended by Act 774, with respect to meeting schedules. Act 2004-384 has the effect of granting power to the counties to set their own meeting day and times. It seems unlikely that the Legislature intended to grant this increased power to the other 66 counties, while requiring Morgan County to continue meeting at 10 A.M. on the second and fourth Mondays of the month as they have been for the last 65 years.

Your second question asks whether the Morgan County Commission will have the authority to establish their new meeting schedule before the November 2004 election of commissioners if it is determined that Act 2004-384 governs the Commission. Act 2004-384 specifically states that the regular schedule must be set “[a]t the first county commission meeting . . . following each election of county commissioners.” 2004 Ala. Acts No. 2004-384. The Act also states that “[t]he *county commission*, by resolution, *may alter the regular meeting days as necessary.*” *Id.* (emphasis added). Act 2004-384 became effective immediately upon its passage and approval by the Governor. The Governor approved the Act on May 3, 2004. Assuming that Act 2004-384 governs the Commission, the Commission has the authority to establish and alter its own meeting schedules as necessary before the election. The Commission must, however, establish a regular meeting schedule at the first county commission meeting following each election of county commissioners.

CONCLUSION

General laws dealing with a specific subject do not automatically repeal local laws dealing with the same subject in the absence of express language. For a general law to impliedly repeal a local law, there must be a plain indication of the Legislature’s intent to repeal the earlier law and

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irreconcilability between the general law and the local law. It is the opinion of this Office that a court would find Act 2004-384 does not repeal Act 129 by implication. A determination of whether Act 2004-384 subsumes Act 129 must be made by the courts as specified in section 105 of the Constitution of Alabama. It is the opinion of this Office that a court would find that Act 2004-384 subsumes Act 129, as amended by Act 774, with respect to meeting schedules.

If a court determines that Act 2004-384 subsumes or repeals Act 129, the Morgan County Commission has the authority to establish a meeting schedule, as necessary, before the November 2004 election of commissioners, but must establish its regular meeting schedule at the first meeting following the election of the county commissioners.

I hope this opinion answers your questions. 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

TK/CJS/kh

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