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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Carol R. Norris
Mobile County License Commissioner
P. O. Drawer 161009
Mobile, Alabama 36616

Residence Requirements - License
Commissioners

A supernumerary license commissioner must be a resident of Alabama and must keep his or her office in the county in which the supernumerary license commissioner is commissioned if he or she assumes the duties of the license commissioner.

Dear Ms. Norris:

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

QUESTION

Is there any residency requirement for an ad valorem supernumerary tax official?

FACTS AND ANALYSIS

In your request, you state that you are currently serving as License Commissioner of Mobile County. You have held that position for the last 15 years and have participated in the supernumerary program. You further state that you will meet all of the statutory requirements for appointment as a supernumerary ad valorem tax official when you retire.

The statutory requirements for officials commissioned as supernumeraries are, as you stated, contained in section 40-6-1 through -6 of the Code of Alabama. Section 40-6-1(a) of the Code of Alabama states as follows:

(a) In the various counties of the State of Alabama having a population of less than 600,000 inhabitants according to the last or any subsequent federal decennial census, any . . . license commissioner . . . in any county of the State of Alabama:

....

(2) Who has served for 12 years as a county official for any county of Alabama, at least 10 years or more continuously as . . . license commissioner . . . and who is not less than age 60;

May elect to become a supernumerary . . . license commissioner . . . by filing a written declaration to that effect with the Governor. If the Governor finds any declarant qualified either under subdivision (1) or (2) of this subsection, a commission as . . . license commissioner . . . shall be issued to the declarant by the Governor

ALA. CODE § 40-6-1 (2003).

Section 40-6-2 of the Code of Alabama states as follows:

Such supernumerary . . . license commissioner . . . shall take the oath of office prescribed for . . . license commissioners . . . and, if a vacancy shall occur in the office in the county in which the supernumerary . . . license commissioner . . . holds his commission, he shall immediately assume and exercise all of the duties, power, and authority of such official in said county until a successor is appointed by the Governor of the State of Alabama.

ALA. CODE § 40-6-2 (2003).

Supernumerary officers are discussed in *Johnson v. Bd. of Control of the Employees' Retirement Sys. of Ala.*, 740 So. 2d 999 (Ala. 1999). Although the case relates to a supernumerary circuit judge, the Supreme Court used it as a vehicle to discuss supernumerary officers generally and stated as follows:

By constitutional provision, Alabama has historically denied the legislature the authority to provide for retirement benefits for state officers, including, by

implication, judges. This restriction on the legislative power is currently found in Article IV, § 98, of the Alabama Constitution of 1901:

“The legislature shall not retire any officer on pay or part pay, or make any grant to such retiring officer.”

This constitutional prohibition against providing pensions for state officials led to legislation over the years creating supernumerary positions for certain state officials who met the statutory requirements for such positions. These statutes creating supernumerary positions were enacted to compensate certain public officials who had served the state for a number of years (as prescribed by statute) and who had reached a certain age (also prescribed by statute), provided that the official entering upon the supernumerary office performed certain duties prescribed by the legislature. See *James v. Thompson*, 392 So.2d 1178 (Ala. 1981). Because Article IV, § 98, of the Constitution prohibited laws granting retirement benefits to such state officials, the validity of these statutes depended upon the fact that these supernumerary officials performed certain duties and responsibilities [related to] the supernumerary office created. Although these statutes may have been drafted deliberately to evade the constitutional prohibition against legislation granting retirement pay to state officials, it is clear that the compensation provided was in exchange for services performed by the supernumerary officials, as opposed to compensation for past service to the state.

Johnson at 1003. In *James v. Thompson*, 392 So.2d 1178 (Ala. 1981), cited in the *Johnson* case, the Supreme Court stated clearly that the statutorily prescribed position and function of a supernumerary official is that of a public office, an “office of trust (and) profit.”

Although the statutes creating the position of supernumerary license commissioner do not contain a residency requirement, the general law of Alabama does. Section 36-2-3 of the Code of Alabama provides that “[a]ll officers must reside in this state and keep their offices in such places as are or may be designated by law.” ALA. CODE § 36-2-3 (2001). Section 40-6-2 of the Code requires the supernumerary license commissioner to assume office in the county in which the commissioner holds his or her commission if a vacancy occurs in the license commissioner’s office. ALA. CODE § 40-6-2 (2003). Thus, if a supernumerary

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license commissioner assumes the duties of the license commissioner upon a vacancy, the supernumerary license commissioner must be a resident of Alabama and must keep his or her office in the county in which the supernumerary license commissioner is commissioned.

CONCLUSION

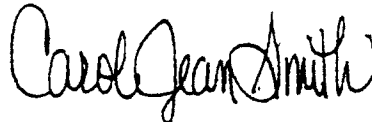
A supernumerary license commissioner must be a resident of Alabama and must keep his or her office in the county in which the supernumerary license commissioner is commissioned if he or she assumes the duties of the license commissioner.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Walter S. Turner 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".

CAROL JEAN SMITH
Chief, Opinions Division

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