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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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TROY KING
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Fred Rayfield, Chairman
Stewartville Water Authority
81 Stewartville Road
Sylacauga, Alabama 35151

Office of Profit – Education, Boards
of – Water Authorities – Boards –
Coosa County

Water authority board members do
not hold an office of profit. A board
member who is also on the Board of
Education may remain on the water
authority board.

Dear Mr. Rayfield:

This opinion of the Attorney General is issued in response to your
request on behalf of the Stewartville Water Authority.

QUESTION

Is it legal for a member of the Stewartville
Water Board to simultaneously serve as a mem-
ber of the Coosa County Board of Education?

FACTS AND ANALYSIS

Your resolution states the one of the board members of the Stewart-
ville Water Board was recently elected to the Coosa County Board of
Education. His term on the Stewartville Water Board does not expire until
March 2008. He was appointed to the Water Board by the Coosa County
Commission. Board members are compensated \$25 per meeting, although
he does not accept the compensation for this office and will not accept the
compensation from the Board of Education when his term begins in Janu-
ary 2005.

Section 280 of the Constitution of Alabama and section 36-2-1 of the Code of Alabama prohibit the holding of two offices of profit. ALA. CONST. amend. 280; ALA. CODE § 36-2-1 (1990). An office of profit is one that “derives its authority directly from the state by legislative enactment; its duties and powers are prescribed by law; and the holder is vested with a portion of the powers of government, whether it be legislative, judicial or executive.” *Opinion of the Clerk*, 386 So. 2d 210 (Ala. 1980). This Office has previously stated that a person holds an office of profit if he or she exercises some part of the sovereign power of the state, has a fixed term of office, and is entitled to compensation. *Opinion of the Attorney General to the Honorable Morgan Weeks, Attorney at Law*, dated December 12, 1989, A.G. No. 90-00070. This Office has also noted that having a fixed term of office is not a prerequisite to holding an office of profit, although it is strongly persuasive that the position is an office rather than employment. *Opinion of the Attorney General to the Honorable John David Whetstone, District Attorney, Baldwin County*, dated April 4, 2001, A.G. No. 2001-145.

This Office has previously determined that a water authority board member does not hold an office of profit. *Opinion to Honorable Fred Rayfield, Chairman, Stewartville Water Authority*, dated January 24, 2001, A.G. No. 2001-084. Members of an incorporated municipal water and sewer board, such as the Stewartville Water Authority, do not hold an office of profit as the board members have not been invested with any part of the sovereign power of the state in the exercise of their duties. *Robbins v. City of Sheffield*, 188 So. 874 (Ala. 1939); *Opinion to Honorable Marcel Black, State Representative*, dated June 11, 1992, A. G. No. 92-00309; *Opinion to Honorable Billy M. Bolton, Mayor, City of Red Bay*, dated November 26, 1991, A. G. No. 92-00067; *Opinion to R. C. Hagood, Mayor, Town of Phil Campbell*, dated December 27, 1984, A. G. No. 85-00137; *Opinion to Honorable Robert Milner, Attorney, City of Wetumpka*, dated June 5, 1967; *Opinion to Honorable Wilkes C. Robinson, Judge, Juvenile and Domestic Relations Court*, dated November 7, 1955, 81 Op. Att’y Gen. 32, 35 (1955).

If an individual holds two separate offices of profit simultaneously, the individual cannot decline compensation for one or both of the offices and continue to serve in both offices. It is the element of compensation belonging to the office that is one of the determining factors of an office of profit. *Opinion to Honorable William D. Latham, Attorney, Town of Jemison*, dated January 19, 2000, A.G. No. 2000-064.

CONCLUSION

A water authority board member does not hold an office of profit. The water authority board member may remain on the board, even if he or she also holds an office of profit.

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

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division