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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable J. Kirk Day
Cherokee County Probate Judge
Cherokee County Courthouse
Centre, Alabama 35960

Primary Elections – Ballots – Candidates –
Political Parties

The two candidates for nomination to local offices who were unopposed when the last day for filing declarations of candidacy passed for the primary election became the nominees of the party under section 17-16-11(c) of the Code of Alabama. These candidates are entitled to have their names placed on the November 2004 general election ballot because the party chair certified their nominations to the probate judge before the statutory deadline under section 17-7-1 of the Code of Alabama.

Dear Judge Day:

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

QUESTION

Am I correct in not placing on the November General Election ballot the names of the two candidates who were not certified to me until April 12, 2004?

FACTS AND ANALYSIS

Section 17-16-11(b)(1) of the Code of Alabama provides, in pertinent part, that “[t]he county party chair shall, not later than 5:00 P.M. 55 days prior to the date of the primary election, certify to the probate judge the names of all

candidates for nomination to county offices or election to county party offices.” ALA. CODE § 17-16-11(b)(1) (1995). This deadline for the June 2004 primary election was 5:00 p.m. on April 7, 2004. Your request states that on April 12, 2004, at 2:55 p.m., the chairman of one of the local political parties filed a memorandum advising you of the names of two candidates for that party seeking local offices. The two candidates were seeking different local offices and neither had primary opposition. Both candidates had timely filed their statements of candidacy for nomination with the party chair.

Section 17-16-11 of the Code of Alabama further provides that the probate judge shall prepare the ballots for the primary election. This section also specifies the procedure to be followed if a candidate does not have opposition in the primary election. Section 17-16-11(c) states, in pertinent part, as follows:

The probate judge of each county shall have the ballots prepared for the primary election. If a legally qualified candidate for nomination to an office is unopposed when the last date for filing declarations of candidacy has passed, his or her name shall not appear on the ballots to be used in the primary election, and he or she shall be the nominee of the party with which he or she has qualified for the office.

ALA. CODE § 17-16-11(c) (1995).

There is no question that even if the names of the two candidates had been certified by the party chair on April 7, 2004, their names still would not have been placed on the primary ballot because the candidates did not have primary opposition, and they became the party nominees for the November 2004 general election on April 2, 2004. Thus, the question is whether the two candidates who were not certified by the party chairman until April 12, five days after the April 7, 2004, deadline for the primary ballot, are entitled to have their names placed on the November 2004 general election ballot.

Candidates are entitled to have their names placed on the ballot for the general election under the requirements set forth in section 17-7-1 of the Code of Alabama. This section states, in pertinent part, as follows:

(a) The following persons shall be entitled to have their names printed on the appropriate ballot for the general election, provided they are otherwise qualified for the office they seek:

(1) All *candidates who have been put in nomination by primary election and certified in writing by the chair* and secretary of the canvassing board *of the party holding the primary and filed with the probate judge of the county*, in the case of a candidate *for county office*, and the Secretary of State in all other cases, *on the day next following the last day for contesting the primary election for that office if no contest is filed*. If a contest is filed, then the certificate for the contested office must be filed on the day next following the date of settlement or decision of the contest.

ALA. CODE § 17-7-1 (Supp. 2003) (emphasis added).

Statutes setting the time for filing a certificate of nomination are universally held to be mandatory and not directory. *Vandross v. Ellisor*, 347 F. Supp. 197 (D. C. S. C. 1972); *State ex rel. Kusler v. Sinner*, 491 N. W. 2d 382 (N.D. 1992); *Ryshpan v. Cashman*, 132 Vt. 628, 326 A. 2d 169 (1974); *State ex rel. Englert v. Meier*, 115 N. W. 2d 574 (N.D. 1962). Alabama has generally held that election laws are mandatory. *Vickery v. King*, 281 Ala. 303, 202 So. 2d 148 (1967). The Alabama Supreme Court has specifically held that section 17-16-11 of the Code of Alabama is mandatory. *Bostwick v. Harris*, 421 So. 2d 492 (Ala. 1982). In *Bostwick*, the Alabama Supreme Court held that the statutory deadline in 17-16-11(a) for a candidate to file a declaration of candidacy with the party chairman for a primary election is mandatory and that political parties have no authority to change the time fixed by statute. *Id.* Thus, a person who did not file the declaration of candidacy with the party chairman before the deadline was not a candidate and not entitled to have his or her name placed on the general election ballot. *Id.*

Under the facts in this opinion, both candidates filed their declarations of candidacy with the party chairman by the deadline on April 2, 2004. The party chairman did not certify the names of those candidates to the probate judge before the deadline of April 7, 2004, as required by section 17-16-11 for the primary election. If these candidates had party opposition in the primary and the certification of their candidacy was filed by the party chairman after the deadline, their names could not have been placed on the primary election ballot. In this situation, however, the candidates do not have primary opposition; thus, their names were not required to be placed on the primary election ballot.

Section 17-16-11(c) provides that, if a candidate for nomination to an office is unopposed when the last date for filing declarations of candidacy has passed, the candidate shall be the nominee of the party with which he or she has qualified for the office. These candidates were unopposed when the last day for filing a declaration of candidacy with the political party passed. Accordingly, although the names of the two candidates were not certified to the probate judge before the deadline to be placed on the ballot for the primary election, these two candidates became the nominees of the party with respect to the two county offices sought.

These two candidates are entitled to have their names placed on the general election ballot if the requirements of section 17-7-1 are met: the candidates who have been put in nomination must be certified in writing to the probate judge by the chair of the party and the secretary of the canvassing board of the party by the day next following the last day for contesting the primary election. Nominations made by primary election may be contested within 24 hours after the results of the primary election have been declared. ALA. CODE § 17-16-70 (1995). The county executive committee must certify election results on Wednesday, eight days after the primary election. ALA. CODE § 17-16-35 (Supp. 2003).

Accordingly, the day following the last day for contesting the primary election was June 11, 2004, for the June 1 primary election. Based upon the information provided to this Office, the party chairman, on April 12, 2004, certified in writing to the probate judge the names of the candidates for county office who did not have opposition for the primary election. This date was before the statutory deadline of June 11, 2004, for the general election. Accordingly, the two candidates are entitled to have their names placed on the November 2004 general election ballot.

CONCLUSION

The two candidates for nomination to local offices who were unopposed when the last day for filing declarations of candidacy passed for the primary election became the nominees of the party under section 17-16-11(c) of the Code of Alabama. These candidates are entitled to have their names placed on the November 2004 general election ballot because the party chair certified their nominations to the probate judge before the statutory deadline under section 17-7-1 of the Code of Alabama.

Honorable J. Kirk Day
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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:

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

BRENDA F. SMITH
Chief, Opinions Division

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