



2005 - 070

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

February 23, 2005

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

Honorable Tim Burgess  
County Administrator  
Cherokee County Commission  
Courthouse Annex Room 201  
102 Main Street  
Centre, Alabama 35960

Water and Sewer Authorities –  
County Commissions – Boards –  
Appointments - Holdovers

A director of the Cherokee County Water and Sewer Authority, whose term has expired, continues to serve as a board member and chairman until the director is reappointed by the county commission.

The term of office of the director begins to run retroactively to the date the prior term expired.

Dear Mr. Burgess:

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

QUESTION 1

Does the failure of the Cherokee County Commission to formally reappoint the chairman of the Cherokee County Water and Sewer Authority prevent the board member from acting as chairman and a board member until his or her reappointment is formally made by the county commission?

FACTS AND ANALYSIS

Section 11-88-6 of the Code of Alabama provides for the board of directors of a water and sewer authority. According to section 11-88-6, the directors are appointed by the county governing body. ALA. CODE § 11-88-6(d) (2004). Regarding the term of office of board members, it states that "the term of office of each director shall be six years." ALA. CODE § 11-88-6(b) (2004). There is no holdover provision stating that a director shall continue to hold office until his or her successor is elected and qualified.

This Office considered a similar question in an opinion of the Attorney General to Honorable Lowell Barron, Member, Alabama State Senate, dated August 2, 1996, A.G. No. 96-00283:

In an opinion to Honorable Fred G. Mott, City Administrator/Clerk of the City of Foley, under date of September 23, 1980 (A.G. No. 80-00586), this office considered a similar question as it related to holding over by statutory and appointive officers such as the city clerk and police chief. That opinion, in pertinent part, states:

". . . The Code of Alabama is silent on the matter of these officers continued holding of offices until the successors are elected and qualified. However, Quarterly Report of the Attorney General, Vol. X, page 152, cited Mechem on Public Officers and Offices, page 257 as follows:

"Section 397. HOW WHEN AUTHORIZED TO HOLD OVER. -- It is usually provided by law that officers elected or appointed for a fixed term shall hold not only for that term but until their successors are elected and qualified. Where this provision is found, the office does not become vacant upon the expiration of the term if there is then no successor elected and qualified to assume it, but the present incumbent will hold until his successor is

elected and qualified, even though it be beyond the term fixed by law.

"Where, however, no such provision is made the question of the right of the incumbent to hold over is not so clear, but the prevailing opinion in this country seems to be that, unless such holding over be expressly or impliedly prohibited, the incumbent may continue to hold until some one else is elected and qualified to assume the office.

"Such a rule seems to be demanded by the most obvious requirements of public policy, for without it there must frequently be cases where, from a failure to elect or a refusal or neglect to qualify, the office would be vacant and the public service entirely suspended.'

"Therefore, in view of the factual situation presented, it is the opinion of this office that the present statutory and appointive officers of the City of Foley, other than the council, will legally hold office from October 6, 1980, until new appointments can be made on or about the 13th day of October, 1980." (Emphasis supplied.)

*Barron* at 2-3.

The law disfavors a vacancy in public office and takes great precautions to avoid such an occurrence. *McRae v. State*, 269 Ala. 241, 112 So. 2d 487 (1959). This Office has previously stated that, in the absence of express or implied provisions to the contrary, a member of a utilities board organized under section 11-50-310, *et seq.*, of the Code of Alabama may continue to hold his or her office until a successor is elected and sworn in. This opinion is consistent with previous opinions of this Office involving other types of boards. See Opinion to Raymond B. Cahoon, Mayor of Tuscumbia, dated June 26, 1990, A.G. No. 90-00306 (Tuscumbia Civil Service Board); Opinion to Al Shumaker, Attorney, Town of Centre, dated June 29, 1987, A.G. No. 87-00237 (member of a utilities board organized under section 11-50-230 of the Code of Alabama); and Opinion

to Morris J. Brooks Jr., Member, House of Representatives, dated April 8, 1987, A.G. No. 87-00146 (member of the Board of Trustees of Alabama A&M University). Considering the prior opinions of this Office, the director in question continues to serve as a board member and chairman until the director is formally reappointed by the county commission.

### CONCLUSION

A director of the Cherokee County Water and Sewer Authority, whose term has expired, continues to serve as a board member and chairman until the director is reappointed by the county commission.

### QUESTION 2

Can the county commission retroactively appoint the chairman of the water authority dating the appointment to begin at the expiration of his or her prior term?

### FACTS, ANALYSIS, AND CONCLUSION

As stated above, a new term of office begins at the expiration of the previous term. Any person appointed to serve would be appointed for a term that begins at the expiration of the previous term. This is true even though a person is holding over in the position. The person appointed does not begin a new six-year term from the date of the appointment.

### QUESTION 3

In the event that either of the above questions are answered in the negative, are previous actions taken by a majority of the board of the water and sewer authority without the deciding vote being cast by the board member, who had not been reappointed, legal and valid actions by the water and sewer authority?

Honorable Tim Burgess  
Page 5

FACTS, ANALYSIS, AND CONCLUSION

The answers to your previous questions negate consideration of this question.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in black ink that reads "Brenda F. Smith". The signature is written in a cursive style with a large initial "B".

BRENDA F. SMITH  
Chief, Opinions Division

TK/LKW  
182405v1/73672