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OFFICE OF THE ATTORNEY GENERAL

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Water and Fire Protection
Authorities – Boards of Directors –
Residence Requirements – Vacancies
– Quo Warranto

If a director of the Cleburne County Water and Fire Protection Authority (“Authority”) moves outside the service area of the Authority or the director’s residence becomes part of the service area of an expanding municipal authority, the director is ineligible to serve on the Authority’s board, and the director’s position becomes vacant.

The director’s position on the Authority’s board became vacant at the time that the director no longer lived and owned property in the Authority’s service area. The director should immediately resign from his or her position. If the director does not resign, the county commission, with the advice of its attorney, can institute a quo warranto proceeding against the individual.

Dear Mr. Ghee:

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

QUESTION 1

If a duly appointed director of the Cleburne County Water and Fire Protection Authority either moves to an area outside the service area of the Authority or has his or her residence encompassed by the service area of an expanding municipal authority, must the director's position be deemed vacated due to the individual becoming ineligible to continue serving in that capacity, or may the director continue to serve out his or her current term?

FACTS AND ANALYSIS

You stated that the Cleburne County Water and Fire Protection Authority was created pursuant to sections 11-88-1 through 11-88-135 of the Code of Alabama. Section 11-88-6(d) of the Code of Alabama provides that "[e]ach director elected by a county governing body shall be a duly qualified elector of that county and shall be resident of and the owner of real property in that part of the service area of the authority which lies within that county. . . ." ALA. CODE § 11-88-6(d) (Supp. 2004).

Section 11-88-6(d) requires that a director of a water, sewer and fire protection authority be: (1) a qualified elector of the county and (2) the owner and resident of real property located in the area served by the authority. Opinion of the Attorney General to Honorable Hal Kirby, Judge of Probate, Franklin County, dated May 3, 1983, A.G. No. 83-00294. It was concluded in the opinion of the Attorney General to Honorable John Q. Boyett, Chairman, Lamar County Water System, dated March 13, 1987, A.G. No. 87-00111, that an individual who resides in another water system service area could not be a member of the Lamar County Water and Fire Protection Authority.

Section 36-9-1(3) of the Code of Alabama provides that an office in this state is vacated "[b]y the incumbent's ceasing to be resident of the state or of the division, district, circuit or county for which he was elected or appointed." ALA. CODE § 36-9-1(3) (2001). A member of a county board of education, who moved to another state and acquired a

definite domicile there, ceased to be a resident of the county, as required, thereby creating a vacancy in his office. *Baker v. Conway*, 214 Ala. 356, 108 So. 18, 19 (1926). *See also* opinion of the Attorney General to Honorable Edmon H. McKinley, Thomasville City Attorney, dated May 13, 2004, A.G. No. 2004-136 (in which it was determined that, if a member of the city board of education becomes a nonresident of the city, the member is disqualified), and opinion of the Attorney General to Honorable James E. Crocker, Superintendent, Attalla City Schools, dated May 23, 1993, A.G. No. 93-00198 (which stated that, under section 36-9-1(3) of the Code, an office is vacated by the incumbent ceasing to be a resident of the district for which he or she was elected).

A duly elected or appointed public official may vacate his or her office by disqualification. *Ex rel. Graddick v. Rampey*, 407 So. 2d 823, 826 (Ala. 1981). The fact that the individual may have been qualified at the time of his or her election or appointment is not sufficient to entitle the public official to hold office if, during the time of his or her incumbency, the public official ceases to be qualified. *Id.* at 826.

CONCLUSION

If a director of the Cleburne County Water and Fire Protection Authority moves to an area outside the service area of the Authority, or the director's residence becomes part of the service area of an expanding municipal authority, the director is ineligible to serve on the Authority's board, and his or her position becomes vacant.

QUESTIONS 2 AND 3

If it is determined by the county commission that a current director did not, upon appointment, and does not now own real property and have an established residence in the service area of the Authority, is the director's position to be considered vacant by the county commission, or is there a process through which the commission must go to separate the individual from the position so that an eligible person can be appointed?

If the county commission must go through some process to declare a position vacant for a specific reason, what is that process?

FACTS AND ANALYSIS

As previously stated, the director's position on the Authority's board becomes vacant once it is determined that the director does not live in the service area of the Authority. In this event, the member should resign or be removed by quo warranto action. *McKinley* at 3. Quo warranto is the proper procedure to test whether a party is eligible to hold public office. ALA. CODE § 6-6-591 (1993); *Ackers v. State*, 283 Ala. 248, 250, 215 So. 2d 578, 579 (1968); and opinion of the Attorney General to Honorable H. C. Wiley, Jr., Attorney, Walker County Commission, dated September 10, 1997, A.G. No. 97-00276.

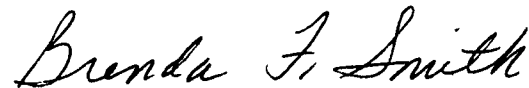
CONCLUSION

The director's position on the Authority's board became vacant at the time that the director no longer lived and owned property in the Authority's service area. The director should immediately resign from his or her position. If the director does not resign, the county commission, with the advice of its attorney, can institute a quo warranto proceeding against the individual.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division