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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Sandra Lasseter
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Board of Registrars – Elections – Poll
Lists – Voter Registration

The board of registrars cannot update a voter's registration records for purposes of an upcoming election when the information is submitted during the ten-day period before that election. The board of registrars may, however, use that information to update the voter's registration records for subsequent elections.

Voter information submitted to the board of registrars on the last day to register to vote for an election should be processed in time to be included on the poll lists or the supplemental poll lists that the probate judge provides to each precinct before the election.

A voter who has moved to a different precinct within the county, but failed to update his registration address before the ten-day cutoff, is, however, entitled to vote a provisional ballot at the voter's new polling place. To cast a provisional ballot, this voter will be required to supply his or her current address on a reidentification form. These reidentification forms will be utilized by the board of registrars in determining whether the provisional

ballots should be counted. This provisional ballot will be counted if the registered voter casts a ballot in the precinct in which the voter resides and did not cast a ballot in the precinct from which the voter moved.

Dear Ms. Lasseter:

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

QUESTIONS

1. Does state law require the board of registrars to update a voter's registration record when the updated information is submitted during the ten days before an election?

2. If the answer to Question One is in the affirmative and an update is received and processed after the list of registered voters have been prepared for each polling place, what obligation does the board of registrars have to remove the name of the voter from his or her former polling place?

FACTS AND ANALYSIS

Your request states the following facts:

The board of registrars receives updated information for the voter list during the ten-day close of registration before an election. This information, which typically reports a change in residential address, is submitted by a voter on a voter "update" or "reidentification" form or on a voter registration application.

Our board of registrars, along with many others, has interpreted section 17-4-120 of the Code of Alabama as not permitting us to update a voter's record

during the ten-day close of registration, just as we would not add new voters to the list if their applications were received after the deadline for registering.

Voter registration applications and updates are received by the board of registrars of each county, and the board is responsible for accepting or rejecting these applications. ALA. CODE § 17-4-122 (1995). The voter registration information “obtained by any registrar in the state shall be electronically entered into the computerized [statewide voter registration] list on an expedited basis at the time information is provided to the registrar.” ALA. CODE § 17-4-210 (Supp. 2004). Section 17-4-120 of the Code of Alabama provides the cutoff for registering someone as a qualified elector:

The boards of registrars in the several counties of the state or their deputies *shall not register any person as a qualified elector within 10 days prior to any election*; provided, that the boards shall maintain open offices during business days in such 10-day period and on election day during the hours of voting.

ALA. CODE § 17-4-120(a) (1995) (emphasis added). In addition, section 17-4-132 of the Code of Alabama provides, in part, as follows:

When the board has sufficient evidence furnished it that any elector has permanently moved from one precinct to another within the county, it shall transfer the name of such elector to the registration list of the precinct to which such elector has moved, and shall give notice by mail to such elector if the elector has not requested the change of registration.

ALA. CODE § 17-4-132 (1995).

This Office has previously addressed the function served by the board of registrars during the ten-day period before the election. “The purpose for opening the board office during the ten days before an election is to allow voters to have any questions or problems concerning the upcoming election addressed.” Opinion to Annette Bozeman, Probate Judge, Marion County, dated March 8, 1990, A.G. No. 90-00172. This Office has also stated that the board of registrars cannot register a person to vote in an upcoming election within the ten days before that election but may, during the ten-day period, register voters for subsequent elections. Opinion to Wanda Parker, Chairman, Board of Registrars,

dated May 28, 1993, A.G. No. 93-00200; Opinion to Faye H. Cowling, Chairperson, Baldwin County Board of Registrars, dated October 29, 1984, A.G. No. 85-00052.

The fundamental rule of construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dept. of Mental Health and Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002); *Gholston v. State*, 620 So. 2d 719, 721 (Ala. 1993). In construction of statutes, legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser v. Anheuser-Busch*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991). In construing statutes, courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001); *Wal-Mart Stores, Inc. v. Patterson*, 816 So. 2d 1, 6 (Ala. 2001); *Ex parte S.C.W.*, 826 So. 2d 844, 850 (Ala. 2001).

Voter registration is designed to ensure that only eligible persons vote and that they vote only once, thereby safeguarding against electoral fraud. Without a suitable method to prepare an authentic list of qualified voters in advance of election day, the confusion at the polls and the opportunity for fraudulent ballots might jeopardize the election process. 25 Am. Jur. 2d *Elections* § 179. Registration cutoffs are administratively necessary to permit preparation of accurate voting lists. *Burns v. Fortson*, 410 U.S. 686, 686 (1973); *Marston v. Lewis*, 410 U.S. 679, 681 (1973).

The purpose of the ten-day voter registration cutoff is to allow sufficient time for the poll lists to be prepared by the board of registrars and distributed to the polling places before election day. After the ten-day cutoff occurs, the board of registrars must review the applications that were submitted before the deadline. They also must review the applications postmarked by the deadline that arrive several days later. See Office of the Secretary of State, Administrative Code, Chapter 820-2-2-.21, February 14, 2001. Once all the information has been added to the state voter registration list, the board of registrars must "deliver [the county] lists of qualified electors for each precinct to the judge of probate and certify that the same was produced from the state voter registration list. . . ." ALA. CODE § 17-4-130 (Supp. 2004). Then, the judge of probate "shall deliver or cause to be delivered to the inspectors in each precinct, each district, each ward, or each other subdivision one copy of the list of qualified electors printed for such box or voting place immediately preceding" the election. *Id.* For all of these steps to be completed before election day, the ten-day

cutoff period must apply to both registration of voters and updating of voter records.

Permitting a voter to update during the ten-day period would open the door to illegal voting because there would be no safeguards to prevent the voter from voting in two places. The voter's update would not be completed in time to have his or her name added to the list at the new polling place, or to have the voter's name removed from the list at the former polling place. When the voter attempted to vote at the new polling place, the election official would not find the voter's name on the list. Then, the election official would call the board of registrars to determine if this person should be allowed to vote. If this voter had been allowed to update during this ten-day period, the board of registrars would tell the official that this person's name does appear on the list and that this person should be permitted to vote without using a provisional ballot. A problem arises, though, because this voter's name still remains on the poll list at his or her former polling place, and nothing prevents this voter from also voting at that former polling place.

This Office has previously stated that the ten-day cutoff period applies to both registration of voters and updating of voter records: "voters may register to vote *and update voter information* up to 10 days before the municipal election. ALA. CODE §§ 17-4-120 and 17-4-132 (1995)." Opinion to William M. Bouldin, Attorney, City of Russellville, dated July 10, 2000, A.G. No. 2000-193 (emphasis added).

Section 17-4-122 of the Code of Alabama requires that the Alabama Supreme Court prescribe the form and contents of the voter registration application. ALA. CODE § 17-4-122 (1995). On October 22, 1999, the Alabama Supreme Court approved the two current voter registration forms. The "State of Alabama Postcard Registration Form" states that "[r]egistration and *updating* of voter records cuts off ten days prior to each election in Alabama." (Emphasis added). Thus, the Alabama Supreme Court has approved language that applies the ten-day cutoff period to both registration of voters and updating of voter records.

Accordingly, the board of registrars cannot update a voter's registration records for purposes of an upcoming election when the information is submitted during the ten-day period before that election. The board of registrars may, however, use that information to update the voter's registration records for subsequent elections.

Because the answer to Question One is in the negative, there is no need to address Question Two.

CONCLUSION

The board of registrars cannot update a voter's registration records for purposes of an upcoming election when the information is submitted during the ten-day period before that election. The board of registrars may, however, use that information to update the voter's registration records for subsequent elections.

QUESTION

3. If the answer to Question One is in the negative, what is the legal distinction between updates submitted with provisional ballots on election day and those submitted by a voter directly to the board of registrars the last day to register to vote for an election?

FACTS AND ANALYSIS

During the 2003 Regular Session, the Alabama Legislature passed Act 2003-313, implementing the requirements of the federal Help America Vote Act of 2002, Pub. L. 107-252. *See* 42 U.S.C.A. § 15403 (West Supp. 2004). One of the new processes adopted in Act 2003-313 was the use of provisional voting. Section 17-10A-2 of the Code of Alabama provides the grounds upon which a provisional ballot must be issued:

A voter shall be required to cast a provisional ballot when:

(1) The name of the individual does not appear on the official list of eligible voters for the precinct in which the individual seeks to vote, and the individual's registration cannot be verified while at the polling place by the registrar, deputy registrar, or a member of the canvassing board.

(2) An inspector has knowledge that the individual is not entitled to vote at that precinct and challenges the individual.

(3) The individual is required to comply with the voter identification provisions of Section 17-10A-1 but is unable to do so.

(4) A federal or state court order extends the time for closing the polls beyond that established by state law and the individual votes during the extended period of time. Notwithstanding any other provision of state law, where provisional ballots are cast pursuant to a federal or state court order extending the time for closing the polls beyond that established by state law, the provisional ballots shall be segregated from other provisional ballots into a separate sealed container for such purpose and shall be counted, tabulated, and canvassed only pursuant to the order of a court having proper jurisdiction.

ALA. CODE § 17-10A-2(a) (Supp. 2004).

The provisional voter is required to “complete a voter reidentification form prescribed by the Secretary of State for use in updating the state voter registration list. This form shall indicate whether it is associated with a provisional ballot.” ALA. CODE § 17-10A-2(b)(3) (Supp. 2004). Section 17A-10-2 further provides, in part, as follows:

The written affirmations of the provisional voters, inspector challenge statements, and all voter reidentification forms shall be placed in a sealed envelope addressed to the board of registrars and delivered by the sheriff to the board of registrars no later than noon on *the day following the election*. . . .

Upon receipt of materials returned from the polling places, the board of registrars *shall forthwith update the state voter registration list utilizing the voter reidentification forms of provisional voters* and shall verify by a certification attached to each provisional voter affirmation whether the provisional vote

is entitled to be counted and the reason for or against counting the provisional ballot.

ALA. CODE § 17-10A-2(d), (e) (Supp. 2004) (emphasis added).

Voter information submitted to the board of registrars on the last day to register to vote for an election should be processed in time to be included on the poll lists or supplemental poll lists that the probate judge provides to each precinct before the election. Thus, this information will be utilized for the current election.

Reidentification forms of provisional voters are handled differently. As emphasized above, the board of registrars receives the reidentification forms of provisional voters "the day following the election." ALA. CODE § 17-10A-2(d) (Supp. 2004). Consequently, updates from the reidentification forms of provisional voters will not be included on the poll lists that the probate judge provides to each precinct before the election. After receiving the reidentification forms of provisional voters, the board of registrars "shall forthwith update the state voter registration list" using these forms. ALA. CODE § 17-10A-2(e) (Supp. 2004). Thus, these reidentification forms will be utilized by the board of registrars in determining whether the provisional ballots should be counted. As a result, a registered voter who has moved to a different precinct within the county, but who failed to update his registration address before the ten-day cut-off, should be allowed to vote by provisional ballot in the precinct in which the voter resides.

When deciding whether to authorize the appointing board to count the provisional ballot of someone who has moved to a new precinct, the board of registrars must inquire into whether that voter also voted in his or her former precinct. If the individual voted in both his or her current and former precinct, the provisional ballot should not be counted. Also, because it is illegal for anyone to attempt to vote more than once in any election, the local district attorney should be notified. ALA. CODE § 17-23-1 (1995).

CONCLUSION

Voter information submitted to the board of registrars on the last day to register to vote for an election should be processed in time to be included on the poll lists or supplemental poll lists that the probate judge provides to each precinct before the election.

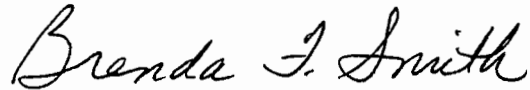
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Rushing Payne of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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