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STATE OF ALABAMA

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88-00224

Honorable Edward Jackson
Circuit Judge
Twentieth Judicial Circuit
P. O. Drawer 6406
Dothan, AL 36302

Elections - Boards of
Registrars - Absentee Ballots -
Election Officials

A member of the board of
registrars cannot serve as an
absentee election manager.

Dear Judge Jackson:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

Can a member of the board of
registrars be appointed as a county
absentee election manager?

FACTS AND ANALYSIS

Code of Alabama 1975, Section 17-10-2 provides for the
designation of an absentee election manager in a county.
According to this provision, the register of the county, or
if he declines, the circuit clerk, is to serve as the
absentee election manager. If the register and the clerk do
not serve as the absentee election manager for some reason,
then the presiding circuit judge is to appoint an individual
to serve in that position. The qualifications for an
individual who serves as an absentee election manager as set
out in Section 17-10-2 are: (1) he must be qualified in
training and experience; (2) he must be a qualified elector
of the county; and (3) he cannot be a candidate in the
election.

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Code of Alabama 1975, Section 17-4-150 concerns the qualifications and appointments of registrars and states that a member of the board of registrars must be: (1) reputable and suitable persons to be appointed to that position; (2) qualified electors and residents of the county; and (3) not a holder of an elective office.

Because an absentee election manager is an appointive position and not an elective office, there is no violation of Section 17-4-150 if a registrar serves as an absentee election manager. Furthermore, I do not find any other statutory prohibition that would make a member of the board of registrars ineligible to serve as an absentee election manager.

Section 280 of the Constitution of Alabama 1901 prohibits an individual from holding two offices of profit at the same time. A member of the board of registrars holds an office of profit. Quarterly Reports of the Attorney General, Vol. 1, p. 85. However, an absentee election manager does not hold an office of profit. Opinion of the Attorney General to Mrs. Aileen Blow, Tax Collector of Bullock County, dated August 9, 1982. Therefore, an individual is not prohibited by Section 280 from serving in each of these positions.

Although my research does not reveal any statutory or constitutional prohibition against a registrar serving as an absentee election manager, there is a great potential for conflict of interest between the two offices, and thus a common law incompatibility of offices exists. Code of Alabama 1975, Section 1-3-1 states that the common law of England, so far as it is not inconsistent with the Constitution, laws and instructions of the state, shall continue in force in Alabama except as it may be altered or repealed by the legislature. Therefore, the common law prohibition against one holding incompatible and inconsistent offices remains intact in Alabama. Opinion of the Attorney General to Honorable Fred Gray, Attorney for the Macon County Commission, dated April 30, 1982.

The Supreme Court of Alabama discussed this prohibition against holding incompatible offices in Scott v. Strobach, 49 Ala. 477. The Court stated:

"Incompatibility of offices existed at common law, when from the nature of the offices--the respective duties they imposed, or the relation they bore to

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each other--or pure considerations of public policy, there was a manifest impropriety in one incumbent retaining both."

From the provisions regarding the respective duties of an absentee election manager and a registrar, the relation that these offices bear to one another and considerations of public policy, an individual cannot serve in these positions simultaneously.

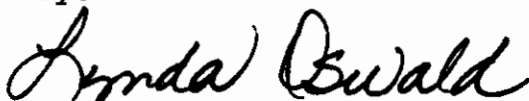
CONCLUSION

A member of the board of registrars cannot serve as an absentee election manager.

I hope that this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



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