

OFFICE OF THE
ATTORNEY GENERAL

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STATE OF ALABAMA

OCT - 5 1990

91-00007

Honorable J. David Stout
Mayor
200 Gault Avenue, South
Fort Payne, Alabama 35967

Municipalities - Emergency
Management Communications
District - Referendum Elections -
Alcoholic Beverages

The term "last preceding general
election of the municipality" in
§ 28-2A-1(b) refers to a
regularly scheduled general
election which for most cities is
held on the fourth Tuesday in
August.

Dear Mayor Stout:

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

QUESTION

Was a referendum conducted at the primary
election on June 5, 1990, a general election
so as to constitute the "last preceding
general election of the municipality" as
contemplated in § 28-2A-1(b), Code of
Alabama 1975?

FACTS, LAW AND ANALYSIS

In the letter transmitting the city's request you have
provided us the following facts:

The council and I were elected at elections
held August and September of 1988 and the
county general election was held in November

of 1988. During the recent primaries held on June 5, 1990, the City of Fort Payne conducted a referendum wherein the City of Fort Payne conducted a special referendum as to whether or not the City could levy total charge for a communications district, i.e., E911 emergency telephone service.

This referendum like the general elections of August and September of 1988 was restricted to residents of the City of Fort Payne; however, in the general election of November 1988 certain citizens who reside within the police jurisdiction of the city and actually within the corporate limits of the city participated in the county general election in voting places located within the corporate limits. The election of city officials in August and September 1988 was conducted under the municipal elections laws of the State of Alabama and the E911 referendum, although held concurrent with the Democrat and Republican primaries, was held by a separate set of officials using a separate voters' list prepared by the DeKalb County Board of Registrars under contract with the city during the summer of 1988.

Section 28-2A-1 provides the procedures for elections respecting the sale and distribution of alcoholic beverages in municipalities. In § 28-2A-1(b) we find the following language:

"Upon petition of 25 percent of the number of voters voting in the last preceding general election of the municipality being filed . . . [the] governing body must call a municipal or option election. . . ."
(Emphasis supplied.)

This office considered a question relating to the similar provisions of law relating to such an election in the counties in an opinion to Honorable Annette Bozeman, Judge of Probate of Marion County, dated November 18, 1981, AG #82-00082, and held that:

" . . . the term 'general election' in § 28-2-1 refers to a regularly scheduled general election, i.e., one held on the first Tuesday after the first Monday in November as provided in § 17-2-3, Code of Alabama 1975."

In § 17-2-3, Code of Alabama 1975, the legislature fixes elections for the governor, lieutenant governor, attorney general, auditor, secretary of state, treasurer, commissioner of agriculture and industries, senators and representatives in the legislature, sheriffs, tax assessors and tax collectors and coroners and other officers not otherwise provided for as "the first Tuesday after the first Monday in November 1978 and every fourth year thereafter." The statute goes on to say that a president of the public service commission shall be elected on the first Tuesday after the first Monday in November 1980 and every fourth year thereafter, and similarly, § 17-2-4 provides that members of county commissions, county treasurers in all counties having treasurers and one constable for each election precinct shall be elected on the first Tuesday after the first Monday in November 1980 and every fourth year thereafter. Section 17-2-5 refers to:

" . . . the general election of state and county officers in November, 1978, and bi-annually thereafter. . . ."

Thus, it appears that, in general, the term "general election" refers to the biannual elections occurring on the first Tuesday after the first Monday in even-numbered years.

However, for municipalities the legislature has provided, in § 11-46-20, Code of Alabama 1975:

"(a) General and special elections in cities and towns of this state, in all municipalities except Class 1 municipalities and except cities and towns organized under a commission form of government, shall be held and conducted at the times and in the manner prescribed in this article [Article 2] . . ." (Emphasis and bracketed material supplied.)

In the next section, § 11-46-21, we find the time prescribed as follows:

"(a) The regular municipal elections in cities and towns shall be held on the fourth Tuesday in August 1984, and quadrennially thereafter . . ."

It appears that the term "regular" used in § 11-46-21, and elsewhere, is subsumed by the term "general" used in § 11-46-20 and § 28-2A-1(b), and this office so holds.

In § 11-46-74 we find the following provision:

"Any municipality whose election dates have been established by classification act, local act or general act of local application may continue to use said election dates unless a majority of the members of the governing body vote to use the election dates established in this article or section 11-43-2."

The election date set in § 11-43-2 is "the fourth Tuesday in August 1984 and quadrennially thereafter."

The election date for cities and towns organized under a commission form of government is "the fourth Tuesday in August of each year in which the term of office of a commissioner shall expire . . ." § 11-46-92. For Class 2 municipalities the election is 1985 and quadrennially thereafter. §§ 11-44C-6 and 11-44C-9.

Clearly, a referendum conducted during a primary election would not be a general election.

In view of the foregoing, the "last preceding general election of the municipality" for the purposes of § 28-2A-1(b) is the last election held on the fourth Tuesday of August, unless there is a local act to the contrary. We have found no such local act pertaining to Fort Payne.

CONCLUSION

The term "last preceding general election of the municipality" within the purview of § 28-2A-1(b), Code of Alabama 1975, is the election held on the fourth Tuesday in August.

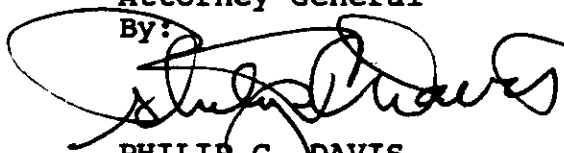
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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General

By:

A handwritten signature in black ink, appearing to read "Philip C. Davis", written over the "By:" label.

PHILIP C. DAVIS
Assistant Attorney General

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