



2014-041

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

February 11, 2014

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Tim Mitchell
Marshall County Probate Judge
425 Gunter Avenue, Suite 110
Guntersville, Alabama 35976

Probate Judges – Fire Districts – Elections
– Polling Places – County Commissions

Pursuant to section 17-6-4 of the Code of Alabama, the Probate Judge of Marshall County shall use the voting precincts designated by the Marshall County Commission for special elections concerning fire districts.

Dear Judge Mitchell:

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

QUESTIONS

Whether, under Act 2013-403 or any other applicable state law, the special election must be held at voting precincts designated by the Marshall County Commission located within the fire district for which the referendum has been requested.

If the opinion of the Attorney General is in the negative as to the first inquiry, then whether, under Act 2013-403 or any other applicable state law, the probate judge can designate any location within the fire district as the “location of the election” as provided in Section 9(d) of Act 2013-403.

FACTS AND ANALYSIS

As a general rule, the authority to designate voting or polling places is set forth in section 17-6-4 of the Code of Alabama. This provision notes that,

except as provided by local law, county governing bodies designate the places for holding elections in precincts. Act 2013-403 is a local act authorizing the Marshall County Commission to establish volunteer fire districts. Moreover, Section 9 of the act sets forth the manner in which elections should be conducted. Section 9 of Act 2013-403 reads as follows:

(a) The provision of the election laws governing the registration of voters, equipment at polling places, furnishing of supplies, appointment of election officers, voting, and canvassing returns at a general election shall apply to the elections for fire district funding.

(b) When a petition for the holding of an election is filed with the judge of probate not less than 30 days and not more than 90 days prior to some other election to be held in the territory in which the election is sought by the petition, the judge of probate shall order the election sought by the petition to be held the same day as the other election held. The county governing body shall pay for the necessary expenses of advertising and conducting the election out of the general funds of the county.

(c) If the petition is not filed at a time that will permit the election sought thereby to be held at the same time some other election is held, as herein provided, the judge of probate shall order the election sought by petition to be held on a day not less than 30 days nor more than 90 days from the date on which the judge of probate enters the order with the costs of the election assumed by the fire district requesting the special election.

(d) *The judge of probate shall give notice* of any election held under Section 5 by publishing for three weeks, at least once a week, on the same day of each week, in a newspaper of general circulation in the territory where the election is to be held, a notice that on the day fixed for the election, *the location of the election*, and the questions to be voted on shall be submitted to the electors of the territory.

Honorable Tim Mitchell
Page 3

Your particular inquiry questions whether the Marshall County Commission or the Marshall County Probate Judge has the specific ability to designate the voting precincts for a referendum regarding fire districts within Marshall County. Section 9(d) of Act 2013-403 states that the Marshall County Probate Judge shall give notice regarding the location of the election.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000).

Nothing in Act 2013-403 expressly or impliedly affords the probate judge with the authority to designate the voting precincts for a referendum regarding fire districts. Hence, it is the opinion of this Office that the Probate Judge of Marshall County is not authorized to designate the location for an election regarding fire districts. Instead, the Marshall County Commission is authorized, pursuant to section 17-6-4 of the Code, to designate the voting precincts for a referendum election regarding fire districts.

CONCLUSION

Pursuant to section 17-6-4 of the Code, the Probate Judge of Marshall County shall use the voting precincts designated by the Marshall County Commission for special elections concerning fire districts.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

LS/MMG
1678699/174421