

# OFFICE OF THE ATTORNEY GENERAL

82-00529



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STATE OF ALABAMA

AUG 30 1982

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Honorable Judson H. Salter, Jr.  
Governor's Office  
State Capitol  
Montgomery, Alabama 36130

Elections - Elections  
Commission - Polling Officials

Members of the election appointing board who are unopposed in the General Election may serve on the board for the purpose of appointing polling officials.

Dear Mr. Salter:

This is in response to your request for an opinion of August 10, 1982, which reads as follows:

"The Governor's Office would like an Attorney General's opinion as to whether or not under §17-6-1 through §17-6-5, Code of Alabama 1975, the Judge of Probate, the Sheriff and the Circuit Clerk of the various counties can serve on the Appointing Board (or Elections Commission) for the purpose of appointing polling officials for the General Election on November 2, 1982, if they themselves are running in the General Election without opposition.

In response to your question, §17-6-3 states that when the judge of probate, the sheriff or the clerk of the circuit clerk is a candidate for election to any office at that election, he shall not serve on the appointing board. This office has ruled in the past that this section would not

prevent a candidate who was unopposed in the primary election from serving on the appointing board. See opinion to Hon. Don Siegelman, April 5, 1982. The rationale for that opinion was that when an official is unopposed for the party nomination, his status changes from candidate to party nominee.

While an unopposed candidate is still technically a candidate in the General Election, the potential for a conflict of interest, which is sought to be avoided by §17-6-6, is not present when a candidate for election is unopposed. Therefore, it is my opinion that a probate judge, sheriff or circuit clerk who is unopposed in the General Election may serve on the elections appointing board.

Sincerely,

CHARLES A. GRADDICK

Attorney General

By-



LINDA C. BRELAND

Assistant Attorney General

LCB:bb

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STATE OF ALABAMA

APR 5 1982

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Honorable Don Siegelman  
Secretary of State  
State of Alabama  
Montgomery, Alabama 36130

Elections - Election Officials-  
Candidates

Probate judge, sheriff, or circuit clerk who is unopposed candidate in primary election may serve on appointing board. If circuit clerk is candidate with opposition, the register (if not also a candidate) may appoint replacements for disqualified members of appointing board.

Opinion by Assistant Attorney  
General Hofmann

Dear Mr. Siegelman:

Your request of March 8, 1982, for an opinion of the Attorney General is set out as follows:

(1) If a Sheriff, Probate Judge or Circuit Clerk is a candidate in a primary election and has no opposition in that primary election, and his or her name will not appear on the primary ballot because the election is not subject to write-in candidates, is one disqualified from serving on the appointing board for that election?

Honorable Don Siegelman  
Page Two

(2) May the register serve in place of the Circuit Clerk and appoint replacements for the Sheriff and Probate Judge in those counties that have a non-elected register, in light of the seeming prohibition against such by Section 17-6-5, Code of Alabama, 1975?

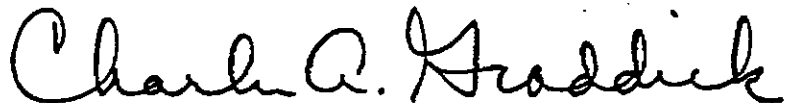
Your first question is answered in the negative, and your second in the affirmative.

Your first question was treated in an opinion of the Attorney General rendered March 10, 1958, to Honorable Handy Ellis and appearing at Quarterly Report of Attorney General, Volume 90, page 38. As may be discerned from the attached copy, that opinion held that an official who is an unopposed candidate for nomination may serve upon the appointing board because his status changes from candidate to party nominee if he remains unopposed when the last day for certifying candidates (or now, for filing declarations of candidacy) has passed. See §17-16-11, Code of Alabama 1975, as amended, the codification of §10 of Act No. 1196, Acts of Alabama 1975, page 2349, which repealed and supplanted Title 17, §344, Code of Alabama 1940, as amended (cited in the attached opinion).

In answer to your second question, where the circuit clerk is a candidate with opposition for election, then the register, if he is not also a candidate, may under §17-6-4, Code of Alabama 1975, appoint replacements for the probate judge, sheriff, and clerk to serve on the appointing board for election managers. Only if the register too is a candidate must appointments of board replacements be made by the governor under §17-6-5 (which must be read in light of §§17-6-3 and 17-6-4, Code of Alabama 1975, in the context of your question).

I hope that this response satisfies your inquiry.

Sincerely yours,



CHARLES A. GRADDICK  
ATTORNEY GENERAL

CAG/EDBH/KS

Attachment

March 10, 1958

Hon. Handy Ellis  
 Chairman  
 Democratic Executive Committee  
 Shelby County  
 Columbiana, Alabama

Elections—Absentee Ballots—Candidates—Clerks of Circuit Courts—Registers—Opinions Overruled, Modified or Distinguished.

1. Under Title 17, Section 344, Code of Alabama 1940, as amended by Act No. 601, General Acts 1947, page 444, an unopposed candidate for nomination becomes the party nominee and his name does not appear on the ballot in the primary election.
2. A circuit clerk who is a candidate for nomination as circuit clerk, but is unopposed, is not disqualified to serve on the appointing board as provided by Title 17, Section 122, Code of Alabama 1940.
3. A register in chancery who is also the circuit clerk and is a candidate for nomination as such clerk, but is unopposed, is not prohibited from handling absentee ballots as provided by Act No. 424, General and Local Acts 1949, page 601 (Title 17, Section 64 (18), 1955 Cumulative Pocket Part, Code of Alabama 1940).
4. Opinion reported in Quarterly Report of Attorney General, Vol. 66, page 94, overruled.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of March 3, 1958, is as follows:

"I shall appreciate your answer to the following inquiries:

- "1. May the Circuit Clerk of Shelby County, who is a candidate for reelection, but who is unopposed, serve on the appointing board as provided by Title 17, Section 120 of the Code of Alabama of 1940?
- "2. May the Register of Shelby County, who is also the Circuit Clerk and a candidate for reelection in the Democratic primary to be held

May 6, 1958, but as such for qualifying for such a reference to absentee vote Section 64(15), et seq.?

"Permit me to call to your attention of Alabama of 1940, a poorly qualified candidate for non last day for certifying candidate on the ballot to be used in nominee of the party with

My answer to both of you:

Title 17, Section 122, Code of Alabama of 1940, member of the appointing board, nominee of the circuit court, is a candidate member of the board may not be a candidate.

Section 3 of Act No. 424, General Acts 1949, page 601, Title 17, Section 64(18), 1955 Cumulative Pocket Part, Code of Alabama 1940, provides that if the register in chancery is disqualified from performing his duties, he shall not handle absentee ballots in that election.

Title 17, Section 344, Code of Alabama 1940, as amended by Act No. 601, General Acts 1947, page 444, provides that a candidate for nomination to an office certifying candidates has passed, the candidate's name shall appear on the ballot in that election and the candidate shall be a candidate for nomination with the party with which he has qualified.

The question to be determined is whether the circuit clerk in this instance cease to be a candidate.

Section 344, as amended, Code of Alabama 1940, as amended, provides that for county offices, the chairman of the appointing board shall certify to the judge of probate the names of the candidates appearing in the election the names of a candidate for nomination. As pointed out hereinabove, if a candidate for nomination is unopposed on the last day for certifying candidates, the candidate's name shall appear upon the ballot. It, therefore, a candidate for nomination who is qualified candidate for nomination shall be a candidate for nomination with the party with which he has qualified. operation of law.

March 10, 1958

May 6, 1958, but as such candidate he is unopposed and the deadline for qualifying for such office has passed, perform the duties with reference to absentee voters as provided by the provisions of Title 17, Section 64(15), et seq.?

"Permit me to call to your attention Title 17, Section 344 of the Code of Alabama of 1940, a portion of which reads as follows: 'If a legally qualified candidate for nomination to an office is unopposed when the last day for certifying candidates is past, his name shall not be printed on the ballot to be used in the primary election, and he shall be the nominee of the party with which he has qualified for office.'"

My answer to both of your questions is in the affirmative.

Title 17, Section 122, Code of Alabama 1940, provides that if any member of the appointing board, namely the judge of probate, sheriff or clerk of the circuit court, is a candidate for election to any office, then such member of the board may not serve in the election in which he is a candidate.

Section 3 of Act No. 424, General Acts 1949, page 601, appearing as Title 17, Section 64(18), 1955 Cumulative Pocket Part, Code of Alabama 1940, provides that if the register in chancery is a candidate for office, he shall be disqualified from performing his duties in reference to the handling of absentee ballots in that election.

Title 17, Section 344, Code of Alabama 1940, as amended by Act No. 601, General Acts 1947, page 444, provides that if a legally qualified candidate for nomination to an office is unopposed when the last date for certifying candidates has passed, then such person's name shall not appear on the ballot in that election and he shall thereupon be the nominee of the party with which he has qualified for the office he seeks.

The question to be determined in this regard is: When does the circuit clerk in this instance cease to become a candidate?

Section 344, as amended, supra, provides that in the case of candidates for county offices, the chairman of the county executive committee shall certify to the judge of probate at least forty days prior to the date of holding the election the names of all candidates nominated for county offices. As pointed out hereinabove, if any legally qualified candidate for nomination is unopposed on the last date for certifying candidates by the county executive committee to the judge of probate, then his name shall not appear upon the ballot. It, therefore, follows that upon this date if a legally qualified candidate for nomination to an office is unopposed, he ceases to be a candidate for nomination and becomes the nominee of the party by operation of law.

Candidates—Clerks of Circuit  
Erruled, Modified or Distingu-

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l Acts 1949, page 601 (Title 17,  
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ly Report of Attorney General,

General McQueen.

earing date of March 3, 1958,

following inquiries:

County, who is a candidate for  
ve on the appointing board as  
e Code of Alabama of 1940?

y, who is also the Circuit Clerk  
Democratic primary to be held

You are, therefore, advised that a circuit clerk who is a candidate for nomination as circuit clerk, and is unopposed, may serve upon the appointing board as provided by Title 17, Section 120, Code of Alabama 1940. By like reasoning, the register in chancery who is also the circuit clerk, and is unopposed for nomination as circuit clerk, may handle the absentee ballots as provided by Act No. 424, supra.

The opinion of this office appearing in Quarterly Report of Attorney General, Vol. 66, page 94, which reaches a contrary conclusion to that hereinabove set forth, is hereby expressly overruled and withdrawn.

Yours very truly,

JOHN PATTERSON  
Attorney General

March 31, 1958

Honorable W. L. Horn  
Commissioner of Revenue  
Department of Revenue

#### C A P I T O L

Licenses—Vending Machines—Words and Phrases—Opinions  
Overruled, Modified or Distinguished.

1. Candy bars, cakes and other confections, even though containing peanuts, are not "peanut products" within the meaning of Act No. 566, General and Local Acts 1957, approved September 18, 1957, unless such is composed principally of "peanuts or peanut derivatives" with any other ingredient merely incidental thereto.

2. Coin-in-the-slot machines vending other products along with peanuts, peanut-butter sandwiches and peanut products are subject to the higher license rate under Act No. 566, supra.

Opinion by Assistant Attorney General Young.

Dear Sir:

Your request for an official opinion bearing date of December 12, 1957, is as follows:

"Re: 1957 Amendment to

"During the Regular Session vending machine license amended, Code of Alabama 23, 1957, and by adding to the following proviso:

"Providing further that only peanuts, peanut-butter \$2.00; \$1.00 for the State and \$1.00 for the municipality shall be paid by the owner of the vending machine. No municipality shall impose a license fee in excess of 50% of the amount of the

"In this respect I would like to know: "1. What is meant by the words 'peanut products' contained in this proviso? Are they confined to products directly containing butter, cooking oil, peanut butter, cooking oil, peanut butter, meaning so as to also include products which may or may not have peanuts in them?"

"2. Where a coin-in-the-slot machine vends sections, some of which sections contain peanuts, some of which sections contain other products such as cakes or candies in them which are vended from a multiple section vending machine license under Section 566, Code of Alabama, shall the \$2.00 license provided for

"As the Department of Revenue is accordingly from Judges of the State, and as they are hereby pending a reply from this office, please advise me by reply from you.

"I also request that you will avoid a multiplicity of such requests.

In answer to the first inquiry of Act No. 566, General Acts 1957, §613 of Title 51, Code of Alabama, which provides for a license for vending machines containing candies, cakes or other confections, and which is applicable to peanuts or peanut derivatives, unless the confection is composed principally of peanuts or peanut derivatives, an ingredient merely incidental to the