

# OFFICE OF THE ATTORNEY GENERAL



99-00273

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

September 1, 1999

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Honorable W. N. Watson  
Attorney, DeKalb County Commission  
Watson, Gillis & Carver, P.C.  
305 Grand Avenue, South  
Fort Payne, Alabama 35967

Elections – Polling Places – County  
Commissions - Emergencies

A county commission may change a polling place within three months of an election if an emergency exists that necessitates changing the polling place. The change must be submitted to the United States Justice Department for preclearance.

Dear Mr. Watson:

This opinion of the Attorney General is issued in response to your request on behalf of the DeKalb County Commission.

## QUESTION

May the DeKalb County Commission change a polling place within 90 days of an election where a local church has notified the county commission that it withdraws the church property for use as a polling place?

FACTS AND ANALYSIS

Polling places are designated by the county commission pursuant to section 17-5A-5 of the Code of Alabama, and may not be changed within three months of an election. Subsection (d) of section 17-5A-5 states in pertinent part:

Except as may be provided further by local election laws or by the electronic vote counting statutes, whenever places of voting are once designated and established as required by this chapter, the voting places for precincts shall not be changed within three months before an election is to be held.

ALA. CODE § 17-5A-5(d) (1995).

Your request states that, just a few days ago, a local church withdrew its permission for portions of the church property to be used as a polling place for the upcoming election on October 12, 1999. The county commission met and declared the unavailability of the church property an emergency and moved the polling place to a new location that has previously been used as a polling location.

This Office has previously held that a polling place that must be held in the courthouse may be moved from the courthouse if an emergency exists that necessitates making the change. Opinion to Honorable Edwin L. Davis, Attorney, Macon County Commission, dated September 7, 1984, A. G. No. 84-00446. In that opinion the polling place was found to be unsafe due to defective electrical wiring. Although the facts are different in your situation, it is clearly reasonable for the county commission to declare that an emergency exists when it is notified within three months of an election that a polling place site will not be available for use as a polling place for that election, and a new location must be selected. As much notice as is possible should be given to the voters who will be affected by this change.

While there may be legal remedies the county commission could pursue, this is an issue of first impression, and a resolution of the issues might not be reached prior to the election. Moreover, if such legal action fails, sufficient time to provide notice to the public of the new polling place might not be available.

This polling place change must be submitted to the United States Justice Department for preclearance.

CONCLUSION

A county commission may change a polling place within three months of an election if an emergency exists that necessitates changing the polling place. The change must be submitted to the United States Justice Department for preclearance.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General

By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive style with a large initial "C".

CAROL JEAN SMITH  
Chief, Opinions Division