



2017-002

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

October 19, 2016

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

Honorable J. Tucker Dorsey
Chairman, Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

County Commissions – Counties –
Redistricting – Residence
Requirements

The Baldwin County Commission lacks authority to alter the district boundaries for Commission elections pursuant to section 11-3-1.1 of the Code of Alabama.

The authority to alter the boundaries would require an act of the Legislature.

A person seeking office as a county commissioner in Baldwin County is required to reside within the district the person seeks to represent for at least one year prior to taking office. Pursuant to Act 1975-841, an elected commissioner is authorized to maintain a temporary residence at the county seat or anywhere in the county as a matter of convenience in the discharge of that commissioner's duties. The temporary residence shall not be construed as a change of residence so as to disqualify that person as a candidate for re-election.

The Commission district lines are not required to be redrawn based on

Honorable J. Tucker Dorsey
Page 2

population because the
commissioners are elected by all
eligible electors residing within the
county.

Dear Chairman Dorsey:

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

QUESTION 1

Does the Baldwin County Commission (“Commission”) have the authority to alter the district boundaries for Commission elections pursuant to section 11-3-1.1 of the Code of Alabama?

FACTS AND ANALYSIS

The Baldwin County Commission was created pursuant to Act 1931-239. 1931 Ala. Acts No. 1931-239, 100. The Commission is divided into four commissioner districts. 1975 Ala. Acts No. 1975-841, 1681, 1682. Each commissioner is required to reside in the district being represented. *Id.* at 1684. Your request states that the commissioners are elected by the vote of the entire county.

Section 11-3-1.1 of the Code of Alabama provides a mechanism by which a county commission may alter or amend the boundary lines for its single-member districts following the federal census. ALA. CODE § 11-3-1.1 (2008). The Baldwin County Commissioners are not elected from single-member districts, but are elected at-large. As such, the Commission is not authorized to alter or amend commissioner districts under the statute. Opinion to Honorable Houston Kenamer, Chairman of the Jackson County Commission, dated May 5, 1995, A.G. No. 95-00210 (stating that an at-large county commission system may not alter or amend its districts pursuant to section 11-3-1.1).

CONCLUSION

The Baldwin County Commission lacks authority to alter the district boundaries for Commission elections pursuant to section 11-3-1.1 of the Code of Alabama.

QUESTION 2

If the answer to Question 1 is no, what is the procedure for altering the district lines?

FACTS AND ANALYSIS

It is a well-settled proposition of law that, as a political subdivision of the state, a county can exercise only that authority conferred on it by law. *Brown v. Bd. of Educ. of Montgomery*, 863 So. 2d 73 (Ala. 2003). “The power to prescribe county commission districts lies with the legislature, but may be delegated to the county commissions” by state or local law. Opinion to Kenneth Joiner, County Administrator/Treasurer, Calhoun County Commission, dated October 2, 2008, A.G. No. 2009-001, at 2, *quoting* opinion to Honorable Morris J. (Mo) Brooks, Jr., Member, House of Representatives, dated August 28, 1989, A.G. No. 89-00410, at 2.

Section 5.01 of the Local Amendments for Baldwin County of the Recompiled Constitution of Alabama affords limited home-rule authority to the Commission. ALA. CONST. LOCAL AMENDS., Baldwin County § 5.01 (amend. 783). As you correctly point out, section 5.01(8) addresses district lines, specifically providing that “[n]othing in this amendment shall be construed to permit the Baldwin County Commission to redistrict itself, except as provided by general law.” *Id.* This Office was unable to find any statutory authority or local laws that authorized the Commission to redraw, realign, alter, or amend its commissioner districts.

CONCLUSION

The authority for the Commission to alter district lines would require an act of the Legislature.

QUESTION 3

Does a commissioner have to reside within the required district at the time of qualification to run for office, at the time of the election, at the time of taking office, or all of the above?

FACTS AND ANALYSIS

Section 11-3-1 of the Code of Alabama sets forth the qualifications for candidates for the office of county commissioner. Subsection (a) states as follows:

(a) Any person who is a qualified elector of the county and has resided in the county for at least one year prior to the date upon which he or she would take office is eligible to seek office as county commissioner. *In counties where the county commissioners represent a certain district, any person seeking office as county commissioner shall be a qualified elector of and reside within the district which he or she seeks to represent upon election or appointment for at least one year prior to the date that he or she would take office. . . .*

ALA. CODE § 11-3-1(a) (2008) (emphasis added). Based on the plain language of the statute, a candidate for Baldwin County Commission must reside within the specific district the candidate seeks to represent at least one year prior to taking office.

Once a person becomes a commissioner in Baldwin County, however, the commissioner may have a temporary residence at the county seat or anywhere in the county during the term of office as a matter of convenience in the discharging of the commissioner's duties. 1975 Ala. Acts No. 1975-841, 1681, 1684. Such temporary residence will not act to change the commissioner's place of residence so as to disqualify the commissioner as a candidate for re-election. *Id.*

CONCLUSION

A person seeking office as a county commissioner in Baldwin County is required to reside in the district the person seeks to represent for at least one year prior to taking office. Pursuant to Act 1975-841, an elected commissioner is authorized to maintain a temporary residence at the county seat or anywhere in the county as a matter of convenience in the discharge of the commissioner's duties. The temporary residence shall not be construed as a change of residence so as to disqualify that person as a candidate for re-election.

QUESTIONS 4 & 5

Pursuant to state or federal law, based on information regarding population that is set out in this inquiry, are the Commission districts required to be apportioned based on population?

If the answer to question 4 is no, is there a ratio where the lack of proportion in population located in each district results in a substantive lack of proportion in prospective qualified candidates for each district which would require redistricting?

FACTS AND ANALYSIS

Your request states that the Commission district lines have not been altered in quite some time. You question whether state or federal law requires the districts to be altered to reflect population changes. When a jurisdiction chooses to establish an electoral system that elects officials by district, it then becomes important to apportion the population proportionately with respect to those districts. The goal is to comply with the basic constitutional standard of ensuring that equal weight is given to each vote cast. This is more commonly referred to as the "one person, one vote" principle that was espoused in *Reynolds v. Sims*, 377 U.S. 533, 557-558 (1964).

The Baldwin County Commissioners, however, are not elected based on districts, but instead, are elected at-large. As such, all qualified electors in the county, regardless of the district in which they live, are

Honorable J. Tucker Dorsey

Page 6

able to vote on any and all candidates for the Commission. Standing alone, this particular electoral scheme does not in and of itself require that the district lines be changed.

CONCLUSION

The Commission district lines are not required to be redrawn based on population because the commissioners are elected by all eligible electors residing within the county.

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:

A handwritten signature in dark ink, appearing to read "G. Ward Beeson, III". The signature is fluid and cursive, with the last name "Beeson" being more prominent.

G. WARD BEESON, III

Chief, Opinions Section

LS/MMG

2215470/193217