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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Lesley Vance
Member, House of Representatives
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Secretary of State – Registrars, Board of –
Russell County

The Supervisor of Voter Registration, acting under the direction of the Secretary of State, has the authority to train, counsel, advise, and evaluate registrars in the performance of his or her lawful duties and acts as the liaison between the Secretary of State and the county boards of registrars. The Secretary of State, under section 17-4-151 of the Code of Alabama, has the authority to remove a member of the board of registrars for cause. Section 17-4-136 authorizes the Secretary of State to promulgate rules for the receipt and administration of applications for registration.

Dear Representative Vance:

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

QUESTION

What authority, if any, does the Secretary of State have over the county boards of registrars?

FACTS AND ANALYSIS

The qualifications and the appointment of registrars are set forth in section 17-4-150 of the Code of Alabama, which states as follows:

(a) Registration shall be conducted in each county by a board of three reputable and suitable persons to be appointed, unless otherwise provided by law, by the Governor, Auditor, and Commissioner of Agriculture and Industries, or by a majority of them acting as a board of appointment. The registrars shall be qualified electors, residents of the county, shall have a high school diploma or equivalent, and possess the minimum computer and map reading skills necessary to function in the office. The Secretary of State shall prescribe guidelines to assist the board of appointment in determining the qualifications of registrars. The registrars shall not hold an elective office during their term. One of the members shall be designated by the board of appointment as chair of the board of registrars for each county.

ALA. CODE § 17-4-150(a) (Supp. 2003).

Registrars are designated as judicial officers and are required to take an oath of office. Section 17-4-154 of the Code of Alabama states as follows:

Before entering upon the performance of the duties of his office, each registrar shall take the same oath as required by the judicial officers of the state, which oath may be administered by any person authorized to administer oaths. The oath shall be in writing and subscribed by the registrar, and filed in the office of the judge of probate of the county. Said registrars are judicial officers and shall act judicially in all matters pertaining to the registration of applicants.

ALA. CODE § 17-4-154 (1995).

Registrars are paid a salary from the State that is disbursed by the county commissions. ALA. CODE § 17-4-153 (1995). Some registrars, under local acts, also receive county supplements. Registrars are not, however, considered state employees except for purposes of social security protection and benefits. *Id.*

The term of office of a registrar is provided in section 17-4-151 of the Code of Alabama, which states as follows:

The registrars appointed under this article may be *removed for cause* by the Secretary of State at any time before the end of their term of office, upon submitting written reasons therefor to the registrar removed and to the members of the appointing board. If not so removed, the registrar may hold office for four years from the date of appointment and until a successor is appointed.

ALA. CODE § 17-4-151 (Supp. 2003) (emphasis added).

Section 17-4-151 authorizes the Secretary of State to remove a board member for cause. The accepted view is that, when the power to remove an officer is for cause, notice and a hearing must be given to the person being removed. *Touart v. State*, 173 Ala. 453, 56 So. 211 (1911); *State ex rel. McIntyre v. McEachern*, 231 Ala. 609, 166 So. 36 (1936); *Simpson v. Van Ryzin*, 265 So. 2d 569 (Ala. 1972). Removal for cause generally requires a finding that the person failed to exercise the skill and capacity necessary to perform the job. *State ex rel. McIntyre*, 166 So. 36, 40 (1936). "For cause" has been defined to be reasons relating to the effective discharge of the duties of the office so as to make further employment harmful to the public interest. It infers that the officer failed to perform his or her duties, was incompetent, inefficient, or is an unsuitable person for the position to which he or she was appointed. *Maddox v. Clark*, 422 So. 2d 791, 794 (Ala. 1982).

The Secretary of State is designated as the chief elections official in the State and must provide uniform guidance for election activities. ALA. CODE § 17-1-8 (Supp. 2003). The Help America Vote Act of 2002, Pub. L. 107-252, requires the state's chief election official to be responsible for a single, uniform, official, centralized, interactive computerized statewide voter registration list. Opinion to Honorable Nancy L. Worley, Secretary of State, dated May 30, 2003, A.G. No. 2003-156. Section 17-4-210 of the Code of Alabama provides for the implementation of the statewide computerized voter registration list. This section states, in pertinent part, as follows:

(a) The State of Alabama shall provide, through the Secretary of State, a nondiscriminatory, single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered by the Secretary of State, with advice from the Voter Registration Advisory Board and the President of the Alabama Probate Judges Association,

which contains the name and registration information of every legally registered voter in the state.

ALA. CODE § 17-4-210 (Supp. 2003). Section 17-4-214 of the Code of Alabama specifies the duties of the boards of registrars with respect to the establishment of the statewide voter registration list. ALA. CODE § 17-4-214 (Supp. 2003). These duties essentially require the registrars to provide certain statistical information about each registered voter to the Secretary of State. *Id.* As a part of the maintenance of the voter registration list, the registrars are also required to enter in a timely manner the names of the electors who vote in each election. ALA. CODE § 17-5-253 (Supp. 2003).

This Office has previously held that the Director of Voter Registration is not given the authority to supervise the boards of registrars or the individual board members. Opinion to Honorable Pat Duncan, State Auditor, dated October 6, 1997, A.G. No. 98-00006. That opinion cited section 17-4-211, which provided, at that time, that the Director served as a liaison between the state and the county boards of registrars. *Id.* As a part of the implementation of the Help America Vote Act of 2002, the Director of Voter Registration was transferred to the Office of the Secretary of State, and the position is now called the Supervisor of Voter Registration ("Supervisor"). Under section 17-4-211, as amended, the Supervisor works at the direction of the Secretary of State. The Supervisor of Voter Registration is given specific duties with respect to the boards of registrars. Those duties are as follows:

(2) To serve as a liaison between the Secretary of State and the county boards of registrars on implementation of existing and future laws pertaining to voter registration.

. . .

(13) To train, counsel, advise, and evaluate registrars in the performance of their lawful functions.

ALA. CODE § 17-4-211 (Supp. 2003).

This provision specifically authorizes the Supervisor of Voter Registration to train, counsel, advise, and evaluate registrars and serve as a liaison between the boards and the Secretary of State with respect to implementation of voter registration laws. Any supervisory function that the Supervisor of Voter Registration or the Secretary of State may perform is limited, and this provision does not give either of them the authority to "supervise" the county boards as

that term is commonly understood. *See also* Opinion to Honorable William J. Benton, Jr., Attorney, Russell County Commission, dated April 21, 2004, A.G. No. 2004-124 (probate judge has no supervisory authority over the county boards of registrars) and Opinion to Honorable Jerry C. Pow, Probate Judge, Bibb County, dated April 7, 2004, A.G. No. 2004-112 (no person or official is authorized to review, approve, or supervise the number of hours that a registrar must work, except the registrars themselves).

“Supervise,” as commonly used, means “to coordinate, direct, and inspect continuously and at first hand the accomplishments of another.” *Webster’s Third New Int’l Dictionary* 2296 (1986). The term “Supervisor of Voter Registration,” as used in these Code sections, does not mean that the person serving in that position is the supervisor of the county boards of registrars, but instead allows the Supervisor to exercise only the powers expressly granted to him or her under section 17-4-211 of the Code.

Although no other official supervises the county boards of registrars, all the parties involved in the election process--the Secretary of State, the county boards of registrars, the probate judges, and the county commissions--must work together to ensure that voter registration and the election process is smoothly and effectively carried out within the guidelines established by the statutes and the rules.

Section 17-4-136 of the Code of Alabama authorizes the Secretary of State to promulgate rules relating to voter registration applications and states that “[t]he Secretary of State may promulgate rules for the receipt of applications for registration and the expedient administration of those applications, but no person shall be registered until a majority of the board of registrars has passed favorably upon the person's qualifications.” ALA. CODE § 17-4-136 (Supp. 2003).

This section authorizes the Secretary of State to promulgate rules regarding the receipt and administration of applications. Before the 2003 amendment of this section, the county boards of registrars were authorized to adopt rules and regulations regarding the receipt and administration of applications. 2003 Ala. Acts No. 2003-313, 733. This provision allows the Secretary of State to adopt uniform rules applicable to all boards of registrars regarding the receipt and administration of voter registration applications. This section does not give the Secretary of State general supervisory authority over the boards. For example, a rule might be adopted to require that the board offices must be open to accept applications during the same hours that the courthouse in the county is open. This rule would require the county boards to remain open when the courthouse is open, but the board members in each county would determine the work

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schedules for the individual board members. This Office is not aware of any rules that have been adopted at this time by the Secretary of State under this section of the Code. Rules relating to voter registration have been adopted under section 17-4-255 of the Code of Alabama relating to administration of the National Voter Registration Act of 1993. ALA. ADMIN. CODE r. 820-2-2-.01 through -.16 (eff. Feb. 14, 2001).

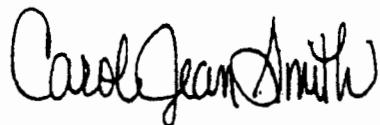
CONCLUSION

The Supervisor of Voter Registration, acting under the direction of the Secretary of State, has the authority to train, counsel, advise, and evaluate registrars in the performance of his or her lawful duties and acts as the liaison between the Secretary of State and the county boards of registrars. The Secretary of State, under section 17-4-151 of the Code of Alabama, has the authority to remove a member of the board of registrars for cause. Section 17-4-136 authorizes the Secretary of State to promulgate rules for the receipt and administration of applications for registration.

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

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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