

OFFICE OF THE ATTORNEY GENERAL

97-00109



BILL PRYOR
ATTORNEY GENERAL
STATE OF ALABAMA

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

FEB 12 1997

Honorable Jim Bennett
Secretary of State
State Capitol
Montgomery, AL 36130

Secretary of State -
Elections - Poll List - Voter
Reidentification - Mail -
Boards of Registrars

As chief state elections official, Secretary of State may make reasonable interpretations of the elections law to provide uniform procedures. Any change in voting must be submitted for preclearance.

Subsection (d) of Code of Alabama 1975, § 17-4-201, only applies to the names of those voters placed in the suspense file pursuant to subsections (a) through (c) of this section.

A notice is mailed if it is addressed, tendered to the post office, and refused. A second forwardable notice is not required to be sent to those voters whose first notice is returned by the post office as undeliverable due to an incomplete address. A second notice is not required if the first notice is returned by the post

office stating that the forwarding notice has expired. Names of all these voters may be placed on an inactive list and in a suspense file.

Dear Mr. Bennett:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Under the authority of Code of Alabama 1975, § 17-4-250(a), which identifies the Secretary of State as the "chief state elections official," may the Secretary of State make reasonable interpretations of state election laws in order to provide uniform procedures for implementing state election laws?

FACTS AND ANALYSIS

Code of Alabama 1975, § 17-4-250(a), provides:

"The Secretary of State shall be the primary state official for federal contact for the implementation of the National Voter Registration Act of 1993. The Secretary of State is the chief state elections official."

There are many instances in which reasonable and uniform interpretations of the elections law must be given. Since the Code identifies the Secretary of State as the chief state elections official, the Secretary of State has the authority to make reasonable interpretations of the elections law. This authority was recognized by the Circuit Court of St. Clair County in State of Alabama v. Wyatt, CV-96-064, May 20, 1996, in which the Court stated:

"The requirement that reidentification forms must be completed prior to allowing an inactive voter to vote is also

supported by the reasonable interpretation of elections law given by the state of Alabama's chief elections official, the Secretary of State. This Court is obliged to give great weight to the interpretations of an act by the administrative agency charged with enforcing the act. Insofar as county election officials operate pursuant to state law and counties are components of state government, it follows that the state's chief elections official is the leading office for implementing state elections law." (Citation omitted.)

As the chief state elections official, the Secretary of State may make reasonable interpretations of the elections law. However, if the Secretary of State adopts any interpretations, rules, or regulations that effect a change in voting, these interpretations, rules, or regulations must be submitted to the United States Justice Department for preclearance. 42 U.S.C. § 1973.

CONCLUSION

As the chief state elections official, the Secretary of State may make reasonable interpretations of the elections law in order to provide uniform procedures for implementing state elections law. Any change in voting effected by these interpretations must be submitted to the Justice Department for preclearance.

QUESTION 2

Does paragraph (d) of Code of Alabama 1975, § 17-4-201, apply only to the names of voters placed in the suspense file pursuant to paragraphs (a) through (c) of the same section, or does it also include the names of voters placed in the suspense file pursuant to other provisions of Alabama law (see especially Act No. 84-389)?

FACTS AND ANALYSIS

Act No. 95-769, codified at Code of Alabama 1975, § 17-4-200 through § 17-4-204, established a statewide voter file maintenance process, which provides a procedure for a statewide cleanup of Alabama's voter list and implements provisions of the National Voter Registration Act of 1993. The process prescribed in this Act is in lieu of other voter list purge procedures previously provided by election law except for the purge procedures used to remove the names of deceased voters, voters convicted of disqualifying crimes, and voters adjudged mentally incompetent. Code of Alabama 1975, § 17-4-200. The Act specifically provides that its provisions are cumulative and supplemental to Act No. 84-389, except as provided in subsections (a) and (b) of Section 17-4-201. Code of Alabama 1975, § 17-4-204.

Code of Alabama 1975, § 17-4-201, states:

"(a) Beginning in January, 1996, and each year thereafter during the month of January, the county boards of registrars shall conduct voter list maintenance activities in lieu of the purge activities which were heretofore conducted in the month of August.

"(b) Beginning in January, 1997, and in January of every fourth year thereafter, the boards of registrars shall mail a nonforwardable notice to all registered voters in the county. The notice shall be designed and provided for the boards of registrars by the Secretary of State. The notice shall be sent on a postcard providing general information on elections. The notice shall be mailed to the last known address of the voter appearing on the voter registration list. If the notice is returned to the boards of registrars indicating that the voter may have relocated, the board shall send a forwardable notice to the registered voter on which the voter may confirm his or her current address. The forwardable notice shall be mailed no later than 90 days after receipt of the returned nonforwardable notice. The boards of

registrars shall record and maintain the dates on which the nonforwardable notice was returned to the board and the date on which the forwardable notice was mailed to the registered voter.

"(c) The boards of registrars shall update the voter list for the county using the information reported to the board by the registered voters on the address confirmation cards provided for in subsection (b). If the registered voter does not respond to the forwardable notice on which the registered voter may confirm his or her address within 90 days on the date on which the notice was mailed or if the forwardable notice is returned to the board as undeliverable, the boards of registrars shall place the name of the registered voter on the inactive list of registered voters and in a suspense file in the office of the board. The suspense file shall contain all of the following information:

 "(1) The name of the registered voter.

 "(2) The last known address of the registered voter.

 "(3) The social security number or other personal identification number of the registered voter.

 "(4) The date on which the name of the registered voter was placed in the suspense file.

 "(d) The name of a registered voter who does not vote or appear to vote in one of the next two federal elections held after his or her name is placed in the suspense file shall be removed from the voter list.

 "(e) The names of persons to be removed from the list of registered voters shall be listed by precinct and in alphabetical order and published in a newspaper of

general circulation in the county once a week for two consecutive weeks in November or December of each year commencing in November 1996." (Emphasis added.)

Under Act No. 84-389 names of voters that were to be purged were identified by the boards of registrars based upon reasonable evidence presented to the board and the names of these voters were placed on a purge list and published in the newspaper. If a voter failed to "reidentify" after at least two state election cycles, his or her name would be removed from the voter list and kept in an inactive file by the board. See Pre-Cleared Implementation Plan for Act No. 84-389. The term "suspense file" was not used under Act No. 84-389.

Your question arises due to the use of the term "suspense file" in the new law. Under § 17-4-201(a) through (c) the name of a voter may be placed on the inactive list and in a suspense file in the office of the board and pursuant to subsection (d) would have his name removed from the list if he does not vote or appear to vote (and reidentify) in one of the next two federal elections after his name is placed on the inactive list and in a suspense file. Under Act No. 84-389 the name of a voter that was placed on the inactive list was considered purged and should no longer be on the voter list. It is our understanding that in some counties this procedure was not followed and the voter list continues to contain the names of voters placed on the inactive list, with an "I" by the name indicating they are inactive. Given the language used in § 17-4-201 and the fact that a suspense file did not exist prior to the enactment of § 17-4-201, it is our opinion that subsection (d) only applies to the names of those voters placed in the suspense file pursuant to subsections (a) through (c) and does not include the names of those voters who are listed as inactive under other provisions of law; yet, are still on the voter list.

CONCLUSION

Subsection (d) of Code of Alabama 1975, § 17-4-201, only applies to the names of those voters placed in the suspense file pursuant to subsections (a) through (c) of this section and does not include the names of those voters who are listed as inactive under other provisions of law.

QUESTIONS 3 & 4

Does the act of presenting the postcards which do not have a complete address to the postal officials constitute a mailing as the term is applied in Code of Alabama 1975, § 17-4-201, even if the U.S. Postal Service examines and then refuses to accept the postcards tendered?

Will Code of Alabama 1975, § 17-4-201 allow for the voters' names to be placed in a suspense file and possibly be purged from the voter list even if, on its face, the address of the voter is inadequate to transmit the card to the voter by a mailing?

FACTS AND ANALYSIS

Based upon our answer to question 2 above, a nonforwardable notice must be sent to all registered voters in a county, including those voters who are listed as inactive but continue to be listed as registered voters on the voter list. Code of Alabama 1975, § 17-4-201(a) and (b). Your request states that a large number of voters on the voter list do not have a complete address which is acceptable for delivery by the U.S. Postal Service, and many of these notices will not be accepted by the post office and will be returned as undeliverable.

These questions require a definition of "mail" or "mailed" which is not provided in the statute. Generally, the term requires that the letter be addressed, stamped, and deposited in the post office, whether by hand or through a street letter box. 26 Words & Phrases pp. 55-57. Proof that a letter was mailed implies a prepayment of postage and a deposit of the letter in the post office, but does not imply that the letter was properly addressed or received by the addressee. Id., at pp. 52-53.

We have been informed that your office and the boards of registrars have a postage permit contract with the post office which provides that the postcard notices, addressed with the last known address of the voter, will be deposited with the post office or tendered to the post office, and if

the post office accepts the notices, then postage will be charged and paid by your office. If the notices are tendered to the post office and the post office refuses to accept the notices because the address is insufficient for delivery, no postage will be charged and the notice will be returned to your office and to the boards. Given this contract, it is our opinion that for purposes of § 17-4-201, the notice is considered mailed if it is addressed, even if the address is incomplete, and it is tendered to the post office and refused by the post office.

With respect to whether the names of voters may be placed in a suspense file if the address is inadequate to allow delivery of the card to the voter, we offer the following information.

Pursuant to § 17-4-201(b) a nonforwardable postcard notice must be mailed to the last known address of the voter. If the notice is "returned to the boards of registrars indicating that the voter may have relocated, the board shall send a forwardable notice to the registered voter on which the voter may confirm his or her current address." This second notice must be sent only if the first notice is returned and indicates that the voter may have relocated. If no address is available or an address is incomplete and the notice is not deliverable, the post office will refuse to accept the notice and return the notice to the board. This is not an indication that the voter may have relocated; thus, a second notice is not required and the name of the voter may be placed on an inactive list and in a suspense file.

If the first notice is accepted by the post office and then returned by the post office stating that the forwarding notice has expired, this may be an indication that the voter has relocated. However, if a second forwardable notice is sent to this same voter at the same address, it will be undeliverable by the post office and returned because the forwarding notice has expired. To require a second notice in these circumstances would be futile and a needless expense to the taxpayers. The purpose of the statute is to obtain correct voter information from the voter himself when possible. This purpose is not achieved by mailing a second notice that the post office acknowledges in advance will be returned as undeliverable. Accordingly, a second notice need not be sent when the first notice is returned by the post office as undeliverable, indicating that the forwarding notice has expired. Names of these voters may be placed on an inactive list and in a suspense file.

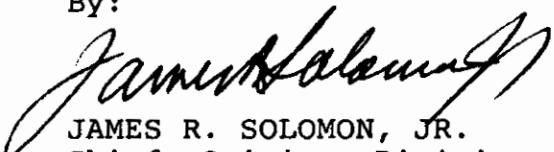
CONCLUSION

For purposes of Code of Alabama 1975, § 17-4-201, a notice is mailed if it is addressed, tendered to the post office, and refused. A second forwardable notice is not required to be sent to those voters whose first notice is not accepted by the post office but returned by the post office as undeliverable due to an incomplete address. A second notice is not required to be sent to those voters whose first notice is returned by the post office with a statement that the forwarding notice has expired. Names of all these voters may be placed on an inactive list and in a suspense file.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:


JAMES R. SOLOMON, JR.

Chief, Opinions Division

BP/BFS
B3A/OP