



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL
ATTORNEY GENERAL

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

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Honorable Marcus E. McDowell
Attorney, City of Fairhope
60 North Section Street
Fairhope, Alabama 36533

Municipalities – Form of Government –
City Councils – Referendum Election –
Baldwin County

The petition process contained in the Council-Manager Act of 1982, as amended, only provides for the election of councilmembers in single member districts pursuant to section 11-43A-8(a) of the Code of Alabama.

Because Act 2018-569 did not modify the petition process set forth in section 11-43A-2 of the Code of Alabama, petitions submitted after passage of the act should not specify whether councilmembers will be elected at large or in single member districts. Such petitions are valid and must only comply with the provisions in section 11-43A-2.

Section 11-43A-1, *et. seq.*, of the Code of Alabama sets out the applicable process for the election of officers and the division of a municipality into districts in the instance of a successful election to change the form of government in a municipality.

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Dear Mr. McDowell:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Fairhope.

QUESTION ONE

Does the petition process contained in the Council-Manager Act of 1982, as amended by Act 2018-569, permit the adoption of the council-manager form of government by petition to consist of councilmembers elected at large as provided in section 11-43-1.1 of the Code of Alabama or does the petition process only provide for the election of councilmembers in single member districts pursuant to section 11-43A-8(a) of the Code of Alabama?

FACTS AND ANALYSIS

Your request states that a petition was drafted and circulated by a group of local citizens who are not affiliated with the Fairhope City Council. You further state that this petition seeks to change the form of government in the city from a mayor-council to a council-manager form of government. Based on information presented, this Office understands that the petition clearly notified the signer that the petition sought to change the current form of government. The petition did not, however, expressly state whether future members of the council would be elected either at-large or by district. The probate judge has certified the petition and set a special election for October 2, 2018.

Questions have arisen regarding this petition due to recent changes in the law by Act 2018-569. The Council-Manager Act of 1982 is codified at section 11-43A-1, *et. seq.*, of the Code of Alabama. ALA. CODE §§ 11-43A-1 to 11-43A-52 (2008, Supp. 2017, & Westlaw 2018). Act 2018-569 added section 11-43A-1.1 and amended sections 11-43A-8, 11-43A-9, 11-43A-14, and 11-43A-32. 2018 Ala. Acts 2018-569. Section 11-43A-1.1 provides a method for a municipality to alter its form of government from mayor-council to council-manager through its municipal council. This provision, however, is in contrast to section 11-43A-2, which authorizes a change of the municipal form of government through the use of a petition signed by a certain percentage of qualified electors followed by a subsequent election by the

citizens of the municipality. ALA. CODE § 11-43A-2 (Supp. 2018). Act 2018-569 did not repeal or modify the petition process established in section 11-43A-2.

Section 11-43A-1.1 states as follows:

Notwithstanding any other provision of this article, any Class 4, 5, 6, 7, or 8 municipality having the mayor-council form of government, ***by resolution of the council, may provide for the adoption of the council-manager form of government*** under this article having a council composed of either five or seven members. One member shall be elected at large, who shall be a voting member of the council. ***Either four or six members shall be council members either at large or from single-member districts, as the resolution shall provide.*** If a municipality has single-member districts for the election of council members when the council-manager form of government is adopted in the municipality, the municipality shall continue with either four or six council members elected from single-member districts and the mayor shall be elected at large. After the adoption of the resolution by the council, the adoption of the council-manager form of government shall be governed by this article, except to the extent of any direct conflict in this article concerning the number and election of members of the council and is subject to the resolution of the council providing for the adoption of the council-manager form of government.

ALA. CODE § 11-43A-1.1 (Westlaw 2018) (emphasis added). This provision specifically authorizes the council to set forth in a resolution whether the members of the council will be elected at large or by single member districts in instances where the council has previously been elected on an at-large basis. Councils that are currently single member districts are required to remain as such.

Section 11-43A-8(a) does not state that the petition may determine the composition of the council. Instead, section 11-43A-8(a) states as follows:

(a) The governing body provided for herein shall be known collectively as the "Council of the City (Town) of _____ (name of city or town to be inserted)" and shall have the powers and duties hereinafter provided. Except as hereinafter provided as otherwise provided for in Section 11-43A-1.1, ***the council shall have five members.*** One shall be the mayor, elected by the voters at large, to preside over the deliberations of the council. One member shall be a council member elected by the voters at large. ***Three members shall be council members elected by the voters from each of three single-member districts.*** The council first elected shall qualify and take office on the first Monday in October following the date of the next ensuing municipal election held for the election of members of a municipal governing body during a general election.

ALA. CODE § 11-43A-8 (Westlaw 2018) (emphasis added).

Based on the foregoing, the petition process does not authorize the petitioners to select whether the future council will be composed of members who are elected at-large or by districts. On the contrary, section 11-43A-8(a) mandates the composition of the future council in a municipality that decides to adopt a council-manager form of government by using the petition process set forth in section 11-43A-2.

This opinion does not address whether a referendum is necessary when the council process is used to change the form of government.

CONCLUSION

The petition process contained in the Council-Manager Act 1982, as amended, provides for the election of councilmembers in single member districts pursuant to section 11-43A-8(a) of the Code of Alabama.

QUESTION TWO

If petitions submitted after adoption of Act 2018-569 do not specify whether council members

will be elected at large or in single member districts,
are the petitions legally valid and due to be counted?

FACTS AND ANALYSIS

As noted earlier, section 11-43A-2 sets forth the petition process that, until the passage of Act 2018-569, was the sole method used to modify the form of municipal government to a manager-council form of government. The statute merely requires that the petition ask “the question of [whether] the adoption of the council-manager form of government for such municipality [should] be submitted to the qualified voters thereof.” ALA. CODE § 11-43A-2 (2008). Nothing in section 11-43A-2 authorizes a petition to dictate the composition of the future council. Rather, the focus of the petition is whether the qualified electors of the municipality would like to have a change in the form of government.

CONCLUSION

Because Act 2018-569 did not modify the petition process set forth in section 11-43A-2, petitions submitted after passage of the act should not specify whether council members will be elected at large or in single member districts. Such petitions are valid and must only comply with the provisions in section 11-43A-2.

QUESTION THREE

If the petitions are valid and due to be counted, how are councilmembers to be elected and when and how will that determination be made by the municipality?

FACTS, ANALYSIS AND CONCLUSION

Your final inquiry questions how the municipality will make determinations regarding the election of subsequent councilmembers. Section 11-43A-1, *et. seq.*, sets out the applicable process. For example, section 11-43A-7 addresses the time for the change in the form of government. Moreover, section 11-43A-9 addresses the division of the municipality into

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districts as well as information regarding the election of municipal officers. Accordingly, strict attention should be given to these provisions.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

STEVE MARSHALL
Attorney General
By:

A handwritten signature in black ink, appearing to read "G. Ward Beeson, III". The signature is written in a cursive style with a prominent "G" and "W".

G. WARD BEESON, III
Chief, Opinions Division

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