

2009-001

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

October 2, 2008

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Honorable Kenneth L. Joiner  
County Administrator/Treasurer  
Calhoun County Commission  
1702 Noble Street, Suite 103  
Anniston, Alabama 36201

County Commissions - Redistricting -  
Districts - Boundaries - Preclearance

Section 11-3-1.1(a) of the Code of Alabama does not permit the county commission to redraw the district boundaries more than one time after each federal decennial census.

Dear Mr. Joiner:

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

QUESTION 1

May the boundaries of county commission districts be altered more often than once, pursuant to section 11-3-1.1(a) of the Code of Alabama, after each federal decennial census?

FACTS AND ANALYSIS

In your opinion request, you state that a small group of voters requests a polling place closer to their place of residence. To comply with this request, the county commission district boundaries would have to be altered. Redistricting is typically done in an effort to create districts of relatively equal population. *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (holding "as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. . . . The Constitutionally guaranteed right to vote and the right to have one's vote counted clearly impl[ies] the policy that state election systems, no

matter what their form, should be designed to give approximately equal weight to each vote cast”). *Id.*, 377 U.S. at 563, citing *Colegrove v. Green*, 328 U.S. 549, 570 (1946). You ask whether section 11-3-1.1(a) of the Code of Alabama permits the county commission to redraw the commission district lines more often than once after each federal decennial census.

It is a well-established 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, 76 (Ala. 2003). “[T]he power to prescribe county commission districts lies with the legislature but may be delegated to the county commissions.” Opinion to Honorable Morris J. (Mo) Brooks, Member, House of Representatives, dated August 28, 1989, A.G. No. 89-00410. Section 11-3-1.1(a) of the Code delegates the power to establish voting districts to county commissions by stating that, “[f]ollowing the release of any federal decennial census any county commission of this state which is at that time electing its members from single-member districts, pursuant to either state or local law or a court order, *may*, by resolution, alter the boundaries of the districts.” ALA. CODE § 11-3-1.1(a) (2004) (emphasis added).

Webster’s Third New International Dictionary defines “decennial” as “occurring or being done every 10 years.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 584 (2002). Section 11-3-1.1(a) allows a county commission to redraw the district boundaries “following the release of any decennial census.” ALA. CODE § 11-3-1.1(a) (2004). Accordingly, it follows that the counties are authorized to redistrict every ten years after the census is released. This is consistent with the presumption that the Legislature does not intend to make any alteration in the law beyond what it declares either expressly or by unmistakable implication. *Holmes v. Sanders*, 729 So. 2d 314, 316 (Ala. 1999). This analysis is further bolstered by the use of the term “may,” which is permissive in nature. This means that the statute does not require county commissions to redistrict after every decennial census.

The language in section 11-3-1.1(a) does not permit the county commission to redistrict more than once between decennial censuses. The statute only gives the option of redistricting after the decennial census, if necessary.

Finally, this analysis is supported by policy considerations. In the words of the United States Court of Appeals for the Eleventh Circuit, the United States “Supreme Court has made it clear that the policy interest of promoting stability in elections dictates against redistricting too frequently.” *Wesch v. Folsom*, 6 F.3d 1465, 1472 (11th Cir. 1993).

CONCLUSION

Section 11-3-1.1(a) does not permit the county commission to redraw the district boundaries more than one time after each federal decennial census.

QUESTION 2

Is there another section of the Code of Alabama that authorizes or, in the absence of a court order, is there any other legal basis for county commissions, elected from single-member districts, to alter the boundaries of the county commission districts more often than once after each federal decennial census?

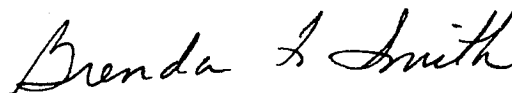
FACTS, ANALYSIS, AND CONCLUSION

The only potential authority is in section 11-3-1.1(a) of the Code, which does not permit the county commission to redraw the district boundaries more than one time after each federal decennial census.

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

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division