

# OFFICE OF THE ATTORNEY GENERAL



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Election Officials - Circuit  
Clerks - Registers -  
Candidates - Absentee Voting

A circuit clerk or register who has no opposition in the primary election but has opposition in the general election may serve as the absentee election manager for the primary and run-off elections.

A circuit clerk or register who has opposition in the opposing party's primary election is prohibited from serving as the absentee election manager in the primary and run-off elections, even though he has no opposition in his own party's primary.

A circuit clerk or register with opposition in the primary election but with no opposition in the general election may serve as the absentee election manager for the general election.

Dear Mr. Gilmore:

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

QUESTION 1

If a circuit clerk or register is a candidate for reelection with no opposition in the primary election, but has opposition in the general election, may the circuit clerk or register serve as absentee election manager for the primary and run-off elections?

FACTS AND ANALYSIS

Code of Alabama 1975, § 17-10-2, provides for the absentee election manager and states in part:

"The register of the county shall, at his option, be the absentee election manager. If the register declines such duties, the circuit clerk of the county, at his option, shall be the absentee election manager. If neither the register nor the circuit clerk of the county assumes the duties of absentee election manager, the presiding circuit judge shall thereupon appoint an absentee election manager . . ."

Code of Alabama 1975, § 17-10-13, provides:

"When the circuit clerk, register or register in chancery is a candidate for any office and has opposition, he shall be disqualified from performing any duties imposed by this chapter with reference to the handling of absentee ballots. At least 55 days prior to the election, the circuit clerk, register or register in chancery shall certify to the presiding circuit judge of the county his candidacy with opposition and that he is

disqualified to serve or otherwise  
prevented from serving. . . ."

The above Code section clearly provides that the circuit clerk or register is prohibited from serving as the absentee election manager if either is a candidate with opposition. In a prior opinion to Honorable Handy Ellis, dated March 10, 1958, Quarterly Reports of the Attorney General, Vol. 90, page 38, this office held that a circuit clerk or register who was unopposed in the Democratic primary could serve as the absentee election manager. Accordingly, if the circuit clerk or register is a candidate with no opposition in the primary election, the circuit clerk or register is not prohibited from serving as the absentee election manager for the primary and run-off elections.

#### CONCLUSION

A circuit clerk or register who has no opposition in the primary election but has opposition in the general election may serve as the absentee election manager for the primary and run-off elections.

#### QUESTION 2

If a circuit clerk or register is a candidate for reelection with no opposition in the primary election, but there are two candidates on the opposing party's primary ballot, and the circuit clerk or register has opposition in the general election, may the circuit clerk or register serve as absentee election manager in the primary and run-off elections?

#### FACTS AND ANALYSIS

The Code provisions cited under question one are also applicable to this question. The opinion to Honorable Handy Ellis, cited above, did not address opposition in the opposing party's primary. Thus, for example, if the circuit clerk or register has no opposition in the Democratic Party primary, but there are two or more candidates running for the same position in the Republican Party primary, the circuit

clerk or register is considered a candidate with opposition. This situation clearly presents the appearance of impropriety, if not a conflict of interest, which § 17-10-13 seeks to prevent.

#### CONCLUSION

A circuit clerk or register who has opposition in the opposing party's primary election is prohibited from serving as the absentee election manager in the primary and run-off elections, even though he has no opposition in his own party's primary.

#### QUESTION 3

If a circuit clerk or register is a candidate with opposition in the primary election, but has no opposition in the general election, may the circuit clerk or register serve as absentee election manager for the general election?

#### FACTS AND ANALYSIS

Again, the Code provisions cited under question one are applicable. A circuit clerk or register who is a candidate with opposition in the primary election is prohibited from serving as the absentee election manager for the primary election. If the circuit clerk or register wins the primary election and has no opposition in the general election, the circuit clerk or register may serve as the absentee election manager for the general election.

#### CONCLUSION

A circuit clerk or register with opposition in the primary election but with no opposition in the general election may serve as the absentee election manager for the general election.

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I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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