

OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL
STATE OF ALABAMA
AUG 11 1997

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Honorable J. Robert Miller
Attorney, City of Huntsville Water Works
Utility Board and Gas Utility Board
122 South Side Square
Huntsville, AL 35801

Gas Boards - Water and
Sewer Boards - Utility
Boards - Compensation -
Conflicts of Interest

Retiree of Huntsville Utilities serving as a board member is not, under general state law, prohibited from voting on a cost-of-living increase for a class of all retired employees of Huntsville Utilities of which he or she is a member.

Dear Mr. Miller:

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

QUESTION

I would like to request an Attorney General's opinion as to whether or not a Board Member of the City of Huntsville Water Works Utility Board and City of Huntsville Gas Utility Board, who is a former retired employee of Huntsville Utilities and who draws benefits from the

State of Alabama Retirement System, may vote on whether or not the Boards will make an additional contribution to the State of Alabama Retirement System to fund "cost of living increases" which are periodically allowed by acts of the Legislature, the most recent act being Act No. 96-572.

FACTS AND ANALYSIS

Your request states that the City of Huntsville Water Works Utility Board was created under the provisions of ALA. CODE § 11-50-430, et seq., (1975) and the Gas Utility Board was created under the provisions of § 11-50-475. Neither of these statutory enabling acts provide any guidance on the question you ask. Nor are there any opinions of this Office which are germane.

If there is a prohibition, it must arise under common law. The retiree who is serving as a board member is not seeking to contract with the board or seeking a benefit for himself which will not apply equally to all others in the class of retired persons. In Opinion of the Justices No. 317, 174 So.2d 700 (Ala. 1985), the Alabama Supreme Court held that an educator/legislator could vote on a pay raise for teachers so long as the bill did not affect the legislator differently from other members of the class to which he belongs. We find that the same rationale would apply here.

We must conclude that neither §§ 11-50-430, et seq., nor 11-50-475, et seq., nor the general law of the state prohibits a retiree of Huntsville Utilities serving on the Board from voting on a cost-of-living raise to be given to a class consisting of all retired employees of Huntsville Utilities.

You may want to contact the State Ethics Commission regarding the applicability, if any, of the State Ethics Law to your question.

CONCLUSION

Retiree of Huntsville Utilities serving as a board member is not, under general state law, prohibited from voting on a cost-of-living increase for a class consisting

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of all retired employees of Huntsville Utilities of which he or she is a member.

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

Sincerely,

BILL PRYOR
Attorney General
By:

JAMES R. SOLOMON, JR.
Chief, Opinions Division

BP/CJS/jho
M7.97/OP