



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

January 20, 2006

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Beth Chapman
State Auditor
Post Office Box 300200
Montgomery, Alabama 36130-0200

Voter Registration – Applicants –
Citizenship – Registrars, Board of –
State Auditor

United States citizenship is a fundamental prerequisite to voting in state and federal elections. As such, it must be demonstrated to the reasonable satisfaction of the Board of Registrars (“Board”). An error or omission that is material is grounds for denying an application. An application form containing a material error or omission regarding citizenship fails to demonstrate that the applicant is qualified to vote and, therefore, should be rejected.

Under federal law, each Board of Registrars is bound to treat every individual the same. An individual who gives incomplete or contradictory responses as to citizenship has not demonstrated that he or she is qualified to vote and, thus, may not be registered. The Board should reject such an application, giving notice to the applicant, stating the reason. The applicant may appeal the decision; or, if the error or omission was an oversight by the applicant, the applicant may complete a new application.

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Dear Ms. Chapman:

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

QUESTION 1

If a potential voter marks “no” to the question of United States citizenship or fails to answer the question of his or her citizenship at the start of the voter registration application, but then signs the oath at the bottom of the voter application that says he or she is a citizen of the United States, can that potential voter be legally registered to vote?

FACTS AND ANALYSIS

Alabama law places on the applicant the burden of establishing that he or she is qualified to register to vote. *See* ALA. CODE § 17-4-123 (1995) (“[a]ny person making application to the board of registrars for registration who fails to establish by evidence to the reasonable satisfaction of the board of registrars that he or she is qualified to register, may be refused registration”).

An applicant demonstrates that he or she is qualified to register to vote by completing a written application. There are at least three different forms accepted for registration in Alabama. There is Alabama’s voter registration form, which you have attached to your opinion request and which is available from the website of the Alabama Secretary of State. *See* State of Alabama Postcard Voter Registration Form (visited Jan. 12, 2006) <<http://www.sos.state.al.us/downloads/election/vr/nvra-2.pdf>>.

There is the federal Election Assistance Commission form, which Alabama is required to accept for elections for federal office. *See* 42 U.S.C.A. § 1973gg-4(a) (2003) (“[e]ach State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission”); The National Mail Voter Registration Form (visited Jan. 12, 2006) (“[i]n 2004 responsibility for developing the National Mail Voter Registration form was transferred to the Election Assistance Commission”).

<<http://www.fec.gov/votregis/vr.shtml>>; Voter Registration Application (visited Jan. 12, 2006) <<http://www.eac.gov/docs/nvra.pdf>>.

There is also the Department of Defense application that Alabama is required to accept from “an absent uniformed services voter or overseas voter.” 42 U.S.C.A. § 1973ff-1(a) (2003 & Supp. 2005); *see* Registration and Absentee Ballot Request – Federal Post Card Application (FCPA) (visited Jan. 12, 2006) <<http://www.fvap.gov/pubs/onlinefpca.pdf>>.

The Alabama form and the Election Assistance Commission form each require the applicant to check “yes” or “no” to indicate whether he or she is a United States citizen. Both forms also state that a “no” answer means the applicant is ineligible to vote. The Department of Defense form does not directly ask the question of citizenship. It does, however, require that the applicant swear or affirm, under penalty of perjury, that he or she falls within one of four specified categories. Three of those categories include a statement that the applicant is a United States citizen. Each of the three forms also requires that the applicant swear or affirm, under penalty of imprisonment, that he or she is a United States citizen.

You ask whether an applicant who gives incomplete or contradictory answers to these citizenship questions may be registered to vote. The right to vote in state and federal elections is reserved to United States citizens. *U. S. v. Penton*, 212 F. Supp. 193, 202 (M.D. Ala. 1962) (the “right to vote is a personal right that is vested in qualified individuals by virtue of their citizenship”). That principle is deeply embedded in federal and state constitutions. *See, e.g.*, U.S. CONST. amend. 15, § 1 (“[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude”); ALA. CONST. § 177 (“[e]very citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence”).

An applicant who has made an incomplete or contradictory response to the question of citizenship has not demonstrated “to the reasonable satisfaction of the board of registrars that he or she is qualified to register.” ALA. CODE § 17-4-123 (1995). Therefore, his or her application to register to vote should be rejected.

Federal law is consistent with state law on this issue. Section 1971 of title 42 of the United States Code, for example, provides as follows:

No person acting under color of law shall—

. . .

deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election

42 U.S.C.A. § 1971(a)(2)(B) (2003).

This federal statute prohibits a “person acting under color of law,” like a registrar, from denying the right to vote to an applicant because of an error or omission that is not material. Alternatively, therefore, an error or omission that is material is grounds for denying an application. An application form containing a material error or omission fails to demonstrate that the applicant is qualified to vote and, therefore, should be rejected.

The materiality of the United States citizenship is established on the application forms themselves. For instance, the Alabama voter registration form states directly under the title of the form that it is “FOR USE BY U.S. CITIZENS ONLY.” Below that, in a column on the right-hand side of the page, the form lists the requirements for registering to vote in Alabama. The first item in the list is that the applicant must “[b]e a citizen of the United States.” Below that, the very first question for the applicant to fill out is a “Statement of U.S. Citizenship.” The applicant is asked if he or she is “a citizen of the United States” and is informed that a “no” answer means the applicant is “not eligible to register to vote.” The applicant is then asked for various personal data, like name and address, before coming to the “voter declaration.” That declaration requires a “solemn[]” oath that he or she meets the requirements for registering to vote, beginning, once again, with United States citizenship.

CONCLUSION

United States citizenship is a fundamental prerequisite to voting in state and federal elections. As such, it must be demonstrated to the reasonable satisfaction of the Board of Registrars. An error or omission that is material is grounds for denying an application. An application form containing a material error or omission regarding citizenship fails to demonstrate that the applicant is qualified to vote and, therefore, should be rejected.

QUESTION 2

May the Board of Registrars ask an applicant for voter registration to complete his or her application if it is incomplete or contradictory that the applicant is not a United States citizen?

FACTS AND ANALYSIS

Federal law provides as follows:

No person acting under color of law shall—

in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote

42 U.S.C.A. § 1971(a)(2)(A) (2003). Accordingly, under federal law, each Board of Registrars is bound to treat every individual the same.

Given that, and as explained in response to your first question, an individual who gives incomplete or contradictory responses regarding citizenship has not demonstrated that he or she is qualified to vote and, thus, may not be registered. Because these incomplete or contradictory responses are “material” errors or omissions, it is appropriate for the Board

of Registrars to reject the application. *See* ALA. CODE § 17-4-123 (1995) (placing on the applicant the burden of demonstrating that he or she is qualified to vote); 42 U.S.C.A. § 1971(a)(2)(B) (2003) (prohibiting a “person acting under color of law” from denying an individual the right to vote because of an error or omission that is not material).

In the event that an application is rejected, the Board must “give written notice to [the] applicant deemed unqualified, within 10 days of its refusal to register him [or her], stating the specific reason for such refusal.” ALA. CODE § 17-4-123 (1995). The applicant may then appeal the Board’s decision “by filing a petition in the circuit court in the county in which he or she seeks to register.” ALA. CODE § 17-4-124 (1995). That petition must “alleg[e] that he or she is a citizen of the United States over the age of 18 years having the qualifications as to residence prescribed by law and entitled to register to vote under the provisions of the Constitution of Alabama, as amended.” *Id.*

If the circuit court determines that the applicant is qualified to register to vote, he or she is “entitled . . . to registration as of the date of his or her application to the registrars.” *Id.* If the circuit court determines that the applicant is not qualified, then an appeal lies in the Alabama Supreme Court, where, again, if the applicant proves he or she is entitled to vote, his or her registration is effective as of the date of the original application. *Id.*

If an applicant receives a notice that his or her application is rejected, the applicant may initiate a formal appeal as described above. If the error or omission on the first application was merely an oversight by the applicant, the applicant may choose to complete and submit a new voter registration application to the Board rather than file an appeal.

CONCLUSION

Under federal law, each Board of Registrars is bound to treat every individual the same. An individual who gives incomplete or contradictory responses as to citizenship has not demonstrated that he or she is qualified to vote and, thus, may not be registered. The Board should reject such an application, giving notice to the applicant, stating the reason. The applicant may appeal the decision; or, if the error or omission was an oversight by the applicant, the applicant may complete a new application.

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

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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