

NEWS RELEASE

Steve Marshall
Alabama Attorney General



FOR IMMEDIATE RELEASE
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Attorney General Steve Marshall Releases Opinion on Secretary of State's Question Regarding Alabama Runoff Election on March 31, 2020

(MONTGOMERY) – Alabama Attorney General Steve Marshall issued an opinion concerning the March 31, 2020, Alabama runoff election. The Attorney General opinion, which was requested by Alabama Secretary of State John Merrill, is attached to this page.

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March 17, 2020

Honorable John H. Merrill
Secretary of State
State Capitol Suite S-105
600 Dexter Avenue
Montgomery, Alabama 36130-4650

Secretary of State – Elections –
Emergencies – Governor – Voting

The Secretary of State may certify the results of a secondary primary election (runoff) that has been postponed and rescheduled by the Governor pursuant to the Alabama Emergency Management Act of 1955 (“AEMA”).

Dear Secretary Merrill:

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

QUESTION

May the Secretary of State certify the results of a secondary primary election (runoff) that has been postponed and rescheduled by the Governor pursuant to the Alabama Emergency Management Act of 1955 (“AEMA”)?

FACTS AND ANALYSIS

On March 13, 2020, the Governor issued a proclamation that a “state public health emergency exists in the State of Alabama” as a result of the emergence of the COVID-19 virus within the state. The proclamation did not address the upcoming runoff elections scheduled for March 31, 2020. You question whether you may certify the results of a runoff election that is postponed and rescheduled pursuant to the Governor’s authority under the AEMA.

The Secretary of State is prohibited from “certify[ing] names for placement on a ballot for election that, under the pertinent provisions of the Alabama Constitution, is not supposed to be held.” *Allen v. Bennett*, 823 So. 2d 679, 685–86 (Ala. 2001). Accordingly, your authority to certify the results of a runoff election that has been postponed and rescheduled due to a public health emergency is contingent upon the Governor’s authority under the AEMA.

The emergence of the COVID-19 virus is an occurrence contemplated under the AEMA that triggers the Governor’s authority to declare a state of emergency such as the one proclaimed on March 13, 2020. According to section 31-9-8(a) of the Code of Alabama, the Governor may declare a state of emergency by issuing a proclamation with findings that a “public health emergency has occurred or is reasonably anticipated in the immediate future within this state and that the safety and welfare of the inhabitants of this state require an invocation of” gubernatorial emergency powers. ALA. CODE § 31-9-8(a) (2016). A state public health emergency includes “[a]n occurrence or imminent threat of an illness or health condition that . . . [i]s believed to be caused by . . . [t]he appearance of a novel or previously controlled or eradicated infectious agent or biological toxin” or “[p]oses a high probability of . . . [w]idespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.” ALA. CODE §§ 31-9-3(4)(a)(2), -3(4)(b)(3) (2016). Additionally, the definition of a “state of emergency” refers to an “epidemic” that causes both “extreme peril to the safety of persons and property within the state” and conditions that “by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city” as a reason to declare a state of emergency. ALA. CODE § 31-9-3(5) (2016).

When the Governor declares a state of emergency, she acquires substantial powers. *See* ALA. CODE §§ 31-9-6, -8 (2016). Those powers include the power “[t]o make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this article within the limits of the authority conferred upon him or her in this article, with due consideration of the plans of the federal government.” ALA. CODE § 31-9-6(1) (2016). The Governor may “make, amend,

and rescind the necessary orders, rules, and regulations looking to the direction or control of . . . the conduct of civilians and the movement or cessation of movement of pedestrians and vehicular traffic, public meetings or gatherings. . . .” ALA. CODE § 31-9-6(4) (2016).

In addition to these general powers, “the Governor shall have and may exercise . . . additional emergency powers.” ALA. CODE § 31-9-8(a) (2016). The Governor may “perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.” ALA. CODE § 31-9-8(a)(5) (2016). Furthermore, the AEMA provides that its provisions “shall be construed liberally in order to effectuate its purpose.” ALA. CODE § 31-9-23 (2016).

The orders, rules, and regulations issued by the Governor under the AEMA, finally, have the force of law. ALA. CODE § 31-9-13 (2016). Section 31-9-13 states as follows:

All orders, rules, and regulations promulgated by the Governor as authorized by this article shall have the full force and effect of law when a copy thereof is filed in the office of the Secretary of State. All existing laws, ordinances, rules, and regulations or parts thereof inconsistent with the provisions of this article or any order, rule, or regulation issued under the authority of this article, shall be suspended during the period of time and to the extent that such inconsistency exists. The Secretary of State shall cause to be printed and distributed to the probate judges of the several counties and to the clerks of the several municipalities of this state a copy of each order, rule, or regulation issued under the authority of this article.

ALA. CODE § 31-9-13 (2016). The Governor, therefore, has the authority under the AEMA to declare a state of emergency as a result of the emergence of the COVID-19 virus, and she has the authority to postpone a primary runoff election to protect the public health and safety during the proclaimed emergency. Should the Governor exercise her authority to postpone the primary runoff election, any existing law setting a contrary date for the primary runoff election would be suspended by the AEMA.

As the state’s chief election official, you have acknowledged that the primary should likely not be postponed beyond July 14, 2020, to avoid interference with the general election in November. We concur with this

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conclusion and agree that the election should likely not be postponed beyond this date unless the proclaimed emergency persists.

CONCLUSION

The Secretary of State may certify the results of a secondary primary election (runoff) that has been postponed and rescheduled by the Governor pursuant to the Alabama Emergency Management Act of 1955.

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

Sincerely,

STEVE MARSHALL
Attorney General
By:



KATHERINE G. ROBERTSON
Acting Chief, Opinions Division

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