



The Birmingham News

Judge asks Attorney General King if Jefferson County can hold sewer debt vote

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A Jefferson County probate court judge on Monday asked Attorney General Troy King whether the county can hold a nonbinding advisory election to consider solutions to the sewer debt crisis.

The Office of the Attorney General has issued previous opinions that counties don't have the authority to include an advisory referendum on a ballot.

The county is asking residents to vote Nov. 4 whether they prefer filing the largest municipal bankruptcy on record or taking other measures to avoid defaulting on the county's \$3.2 billion sewer debt.

Judge Alan King sent a one-page letter to the attorney general's office asking:

"Does Jefferson County have the legal authority to include an advisory referendum on the general election ballot absent specific legislative authority, or otherwise."

"If Jefferson County has the legal authority, does Jefferson County have the authority to pay additional costs, if any, such as the printing of ballots, that are associated with the referendum?"

Elections officials already have ordered 400,000 ballots for the Nov. 4 election. A second ballot to include the referendum questions would cost an extra \$110,000.

Judge King asks for a response by Sept. 5 because the ballots must be finalized by then, he said. "There is also the aspect of possibly having to preclear the advisory referendum with the Department of Justice either on or before Sept. 5, 2008," the judge wrote.

In a January 1999 opinion to state Rep. Arthur Payne, R-Trussville, then-Attorney General Bill Pryor's chief of the opinions division wrote that, "absent specific legislative authority, a county does not have the authority to include an advisory referendum on the ballot."

Attorney general's opinions are considered advisory and do not carry the force of law.

In 2006, a lawyer for the city of Saraland asked the attorney general's office if the Mobile County Probate Court could include an advisory referendum in a June 2006 primary election ballot.

The opinion issued by Troy King's office said, "This office has consistently stated that a city is not authorized to spend funds to conduct an advisory referendum, but a referendum could be held if there is no cost to the city." It also said, "This line of opinions has been extended to the county" and concluded that the probate judge didn't have the "authority to include an advisory referendum" on the ballot.

Birmingham lawyer Bill Slaughter, who drafted the Jefferson County ballot resolution, said an attorney general's opinion would have no impact on the Nov. 4 referendum.

"An attorney general's opinion is without meaningful legal authority and has been so ruled in numerous cases," he said Monday.

Lawsuit likely:

Ed Still, a Birmingham lawyer who specializes in voting law, said Jefferson County's advisory vote "should not go forward unless they make sure it's legal to hold this referendum."

"Absent some odd decision from a court, I think the county is just foreclosed from holding this referendum. Somebody will bring a lawsuit," he said.

Some voters may also be confused about the complexity of the questions, Still said.

"There are some questions in there that looks like graduate school work to me," he said. "It uses words that are not in the vocabulary of everyday people."

The questions come in multiple parts and ask residents whether they:

Prefer bankruptcy, default or repaying creditors in full.

Think all residents, not just sewer customers, ought to help pay the debt.

Want to sell the system to the Retirement Systems of Alabama, as has been proposed by RSA chief David Bronner, and at what price. It also asks whether the state pension fund should be blocked from selling the system to a private company.

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