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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Martha Baker
Mayor, Town of Cedar Bluff
Post Office Box 38
Cedar Bluff, Alabama 35959

Municipalities – Utility Boards – Boards of
Directors – Articles of Incorporation –
Cherokee County

The Town of Cedar Bluff may not increase
the membership of the Board of Directors
of the Utilities Board of the Town of Cedar
Bluff (“Board”) without the agreement of
the Board to amend its articles of
incorporation.

Dear Mayor Baker:

This opinion of the Attorney General is issued in response to your request
on behalf of the Town of Cedar Bluff.

QUESTION

May the Town of Cedar Bluff (“Town”) increase
the number of board members of the Utilities Board of
the Town of Cedar Bluff from five to seven?

FACTS AND ANALYSIS

According to your request, the Town wishes to increase the number of
members of the Board from five to seven pursuant to section 11-50-313 of the
Code of Alabama. The Board, however, has objected to the efforts of the Town
to increase the number of board members on the basis that the current articles of
incorporation of the Board only provide for five members. The Town is a class
8 municipality and has a population of less than 5000 according to the last
federal census.

Section 11-50-313 of the Code of Alabama, in pertinent part, states as follows:

(b) The governing body of any municipality which has a population of less than 5,000 according to the most recent federal census and which has heretofore or hereafter authorized the creation of a corporation as provided in this division may increase the board of directors from five to seven members to serve according to all the conditions and terms set forth in this division.

ALA. CODE § 11-50-313(b) (Supp. 2012).

In the case of *Water Works Bd. of City of Leeds v. Huffstutler*, the Supreme Court of Alabama addressed a similar question. 292 Ala. 669, 299 So. 2d 268 (1974). There, the Court affirmed the holding of the trial court that the statutory provision allowing a municipality, "at its option," to increase the number of board members on a utility board "confers on the city only the power to approve or disapprove amendments [to the Board's charter] initiated by the directors of the board." *Id.* at 681.

This Office, relying on *Huffstutler*, has also opined that section 11-50-313 of the Code "should not be interpreted as conferring a special right on a city to override the charter of a water board in an effort to gain control thereof." Opinion to Honorable John W. Lewis, Mayor, City of Bridgeport, dated September 18, 1995, A.G. No. 95-00324. Rather, "any decision to change the number of directors of an incorporated utility board must be mutual. The change is to be initiated by the Board and approved or disapproved by the municipal governing body." *Id.* at 2.

More recently, the Supreme Court of Alabama has reiterated the *Huffstutler* holding. In the case of *Water Works & Sewer Bd. of City of Wetumpka v. City of Wetumpka*, the Court stated, "[i]n this present case, the City argues that it can appoint a city councilman to the Water Board . . . without an amendment to the Water Board's certificate of incorporation. It cannot." 773 So. 2d 466, 468-69 (Ala. 2000).

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CONCLUSION

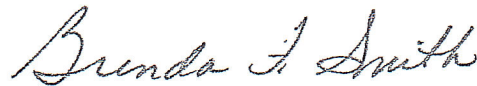
The Town of Cedar Bluff may not increase the membership of the Board of Directors of the Utilities Board of the Town of Cedar Bluff without the agreement of the Board to amend its articles of incorporation.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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