

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
CIVIL DIVISION**

**PATRICIA WORKING and
RICK ERDEMIR,**)

PLAINTIFFS,)

v.)

**CIVIL ACTION NO.
CV 08-900316 JSV**

**JEFFERSON COUNTY ELECTION
COMMISSION, ALAN KING,
MIKE HALE and ANNE-MARIE
ADAMS,**)

DEFENDANTS.)

ORDER

This case was filed electronically at 4:29 p.m. on January 31, 2008 and was randomly assigned to the undersigned. Plaintiffs, Patricia Working and Rick Erdemir, commenced the action by filing a verified complaint seeking declaratory and injunctive relief concerning the scheduled election on February 5, 2008. The complaint was accompanied by applications for a temporary restraining order and a preliminary injunction. In their applications, the plaintiffs seek an order barring the defendants, the Jefferson County Elections Commission, and its three members, Alan King, Mike Hale and Anne-Marie Adams, from canvassing or declaring the results of the February 5, 2008 special election to fill the office of Jefferson County Commissioner, District One. The former Commissioner for District One, Larry Langford, was elected mayor of Birmingham in

October, 2007 and thereupon vacated his position on the County Commission. The defendants thereupon scheduled a special election to fill the vacancy for February 5, 2008. A date for any needed run-off election is scheduled for February 26, 2008.

The court conducted an expedited hearing on this date and has considered the verified filings and the arguments of counsel. There are a number of interesting issues raised by the parties.

The defendants acted under the authority of Alabama Act No. 1977-784. The Act provides:

“Section 3. If when a vacancy occurs a County wide election is scheduled to be held more than forty days and not more than 180 days from the date whereon the vacancy occurs, the first election hereunder, to fill such vacancy, shall be held on the County wide election date. If when the vacancy occurs there is no County wide election scheduled to be held more than forty days and not more than 180 days after the date whereupon the vacancy occurs the first election hereunder, to fill the vacancy, shall be held on a date specified by the Election Commission in the resolution, provided for in Section 2, above, which date shall not be less than thirty-three days and not more than forty days from the date on which the resolution is adopted.”

The definition of “County wide election” is found in Section 1 of the Act:

“A ‘County wide election’ means any election, whether general, special or primary, including run-off elections, whereat qualified electors throughout the County are entitled to vote and which is held to elect a Federal, State or County officer or to nominate a candidate or candidates, for a Federal, State or County office or offices. . . . ‘a scheduled County wide election’ means a County wide election which is scheduled to be held on a date definitely determined when a vacancy occurs.”

When the vacancy in the position occurred, a presidential primary had already been scheduled for February 5, 2008. That date was more than forty but less than 180 days from the time the vacancy occurred.

Plaintiffs contend that the presidential primary does not fit into the definition of a “County wide election” as defined by the Act. Plaintiffs also attack the constitutionality of the Act.

In response, the defendants contend that this court is without subject matter jurisdiction because of plaintiffs' failure to comply with the requirements of Ala. Code (1975) § 6-6-227:

“All persons shall be made parties who have, or claim, any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance, or franchise, such municipality shall be made a party and shall be entitled to be heard; and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.”

The Alabama Supreme Court in *Board of Trustees etc. v. Talley*, 286 Ala. 661, 244 So.2d 791 (1971) states:

“The Uniform Act further provides that if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard. This provision has been held to be mandatory and jurisdictional, and a condition precedent to the entry of a declaratory decree if constitutionality of a statute or ordinance is involved.* * * *Wheeler v. Bullington*, 264 Ala. 264, 87 So.2d 27; *Bond's Jewelry Co. v. City of Mobile*, 266 Ala. 463, 97 So.2d 582; *Busch Jewelry Co. v. City of Bessemer*, 266 Ala. 492, 98 So.2d 50; *Smith v. Lancaster*, 267 Ala. 366, 102 So.2d 1; *Cole v. Sylacauga Hospital Board*, 269 Ala. 405, 113 So.2d 200; *Town of Warrior v. Blaylock*, 271 Ala. 685, 127 So.2d 618; *City of Gadsden v. Cartee*, 279 Ala. 280, 184 So.2d 360; *See also Ex parte Dothan-Houston County Airport Authority*, 282 Ala. 316, 319, 211 So.2d 451.”

It was stipulated at the beginning of the hearing that the Attorney General had not been served with a copy of complaint or the motions. He certainly has had no opportunity to respond to the plaintiffs' claims or to be heard by the court. The issues raised in the complaint are very important and the interested parties should be heard before a decision is rendered.

In addition, the candidates for the Commission position are the parties who have the most interest at stake in this dispute. None of them were made parties to this case and they have not had an opportunity to be heard.

Under these circumstances, this court has no subject matter jurisdiction to act until the statutory jurisdictional requirements have been met. Therefore, this matter will be held under submission until the plaintiffs have complied with the statute.

Done and ordered, this the 1st day of February, 2008.

A handwritten signature in black ink, appearing to read "J. Scott Vowell", written in a cursive style.

J. SCOTT VOWELL, PRESIDING JUDGE