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OFFICE OF THE ATTORNEY GENERAL



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FEB 1 1983

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Honorable Frank Paul White
State Representative
District 91
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Legislature -- City Councils --
Officers and Offices -- Office
of Profit

Councilmember who is not
entitled to compensation does
not hold office of profit and
may continue to serve on
council while serving in the
Legislature.

Dear Representative White:

Your opinion request has been received in the Office
of the Attorney General. Your request reads as follows:

I have been a councilman for the
town of Pollard for some few years now
and have not received any salary or any
expense money. However, at the last
regular meeting of the town council a
resolution was passed to give the coun-
cil members (\$10.00) ten dollars per
meeting as expenses for overseeing town
projects and attending meetings--still
no salary.

Last November I was elected to the
State Legislature and we were concerned

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about my seat on the town council being an office of profit. We determined from a Quarterly Report of the Attorney General Vol. 103 page 8 that it was not an office of profit. However, we thought it best to get an opinion from your office for our files.

The opinion cited at Vol. 103 Quarterly Report of the Attorney General page 8 is addressed to Honorable Russell Plunkett and a copy is attached for your information.

In the Plunkett opinion this office held:

Title 37, Section 404, Code of Alabama 1940, as amended by Act No. 112, Acts of Alabama 1956, page 170, authorizes a municipal council to fix the salaries of its councilmen. Such salaries must be fixed by ordinance or resolution not less than six months prior to the election of the councilmen who receive same. In the event that no salary is fixed in accordance with the provisions of Section 404, as amended, supra, the councilmen are entitled to no compensation

Therefore, a councilman for whom a salary has been properly fixed holds an office of profit. Quarterly Report of Attorney General, Vol. 32, page 20. However, a councilman who is not entitled to compensation does not hold an office of profit. Quarterly Report of Attorney General, Vol. 32, page 154.

Title 37, Section 404, Code of Alabama 1940, as amended can now be found in Code of Alabama 1975, § 11-43-2. No subsequent statutory enactment or court decision has changed this holding. The ten dollar expense allowance cannot be considered to be compensation. It is the opinion of this Office that a municipal councilmember who is not entitled to compensation does not hold an office of profit and is, therefore, not prohibited from continuing to serve as a town councilmember while serving as a member of the Legislature.

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Any question involving an interpretation of the State Ethics Law should be addressed directly to the State Ethics Commission.

I do hope that this response fully answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By--



CAROL JEAN SMITH
Assistant Attorney General

CJS:es

Enclosure

a fee of one-fourth of the proceeds of the sale to the officer making the seizure and furnishing proof necessary for the condemnation. See also Act No. 126, General Acts of Alabama 1947, page 38.

Section 251, supra, however, was further amended by Act No. 669, Acts of Alabama 1949, page 1032, which completely changed the distribution of the proceeds of the same and removed the fees accruing to the officer seizing the vehicle. I am, therefore, of the opinion that there is no fee authorized the sheriff for confiscating an automobile used in the transportation of prohibited liquors. Title 11, Section 1, Code of Alabama 1940.

Very truly yours,
 MACDONALD GALLION
 Attorney General

April 21, 1961

Honorable Russell Plunkett
 Register, Circuit Court
 Cullman County
 Cullman, Alabama

Municipalities—Officers and Offices—Registers—Salaries.

1. A register of a circuit court holds an office of profit.
2. A councilman who is entitled to compensation holds an office of profit.
3. A councilman who is not entitled to compensation does not hold an office of profit.
4. A public officer may not waive his compensation provided by law.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of March 27, 1961, is as follows:

"Will you please give me an opinion on the following question:
 "Can I, as Register of the Circuit Court of Cullman County, Alabama, in Equity, hold the office of Member of the City Council of Hanceville, Alabama, of which I am a resident, with or without pay, as set out and defined in the Code of Alabama, Title 41, Section 5?"

"I respectfully refer you to Rep. p. 58, viz:

"Likewise he may hold the office two offices are not incompatible provided at the same time hold both'."

Section 280, Constitution of Alabama shall hold two offices of profit at State except justices of the peace, commissioners of deeds.

By virtue of Title 41, Section 5, 1940, no person shall hold two offices notaries public.

A State, county or municipal office carrying as a necessary incident to its sovereign power of the State, the term and are fixed by law, is an office of profit and purview of the above constitution.

State ex. rel. Glenn v. Wilkinson, State v. Sanders, 187 Ala. 79, 65 So. 3

This office has heretofore held the of the circuit courts of this State comes falls within the scope of the above provisions. Quarterly Report of Attorney General

Title 37, Section 404, Code of Alabama No. 112, Acts of Alabama 1956, page 11, council to fix the salaries of its councilmen by ordinance or resolution not less than of the councilmen who receive same. fixed in accordance with the provision supra, the councilmen are entitled to receive

If a councilman is entitled to receive his compensation. Our courts have held public policy. See cases cited in Quarterly Vol. 88, page 8.

Therefore, a councilman for whom holds an office of profit. Quarterly Report Vol. 22, page 20. However, a councilman who does not hold an office of profit. Quarterly Vol. 32, page 154.

Premises considered, I am of the opinion and the same time hold the offices of Register of Cullman County and councilman of the City of Hanceville, Alabama, has been properly provided for said

I respectfully refer you to Rep. Atty. General, July-Sept., 1943, p. 58, viz:

"Likewise he may hold the office of alderman without pay. The two offices are not incompatible positions and the same person may at the same time hold both."

Section 280, Constitution of Alabama 1901, provides that no person shall hold two offices of profit at one and the same time in this State except justices of the peace, constables, notaries public and commissioners of deeds.

By virtue of Title 41, Section 5, Subsection 7, Code of Alabama 1940, no person shall hold two offices of profit in this State except notaries public.

A State, county or municipal office, whether elective or appointive, carrying as a necessary incident to its exercise some part of the sovereign power of the State, the term and salary or prerequisites of which are fixed by law, is an office of profit under the State within the meaning and purview of the above constitutional and statutory provisions.

State ex. rel. Glenn v. Wilkinson, 220 Ala. 172, 124 So. 211; and State v. Sanders, 187 Ala. 79, 65 So. 378.

This office has heretofore held that the office of register of any of the circuit courts of this State constitutes an office of profit and falls within the scope of the above constitutional and statutory provisions. Quarterly Report of Attorney General, Vol. 52, page 238.

Title 37, Section 404, Code of Alabama 1940, as amended by Act No. 112, Acts of Alabama 1956, page 170, authorizes a municipal council to fix the salaries of its councilmen. Such salaries must be fixed by ordinance or resolution not less than six months prior to the election of the councilmen who receive same. In the event that no salary is fixed in accordance with the provisions of Section 404, as amended, supra, the councilmen are entitled to no compensation.

If a councilman is entitled to receive a salary, he may not waive his compensation. Our courts have held that such a waiver is against public policy. See cases cited in Quarterly Report of Attorney General, Vol. 88, page 8.

Therefore, a councilman for whom a salary has been properly fixed holds an office of profit. Quarterly Report of Attorney General, Vol. 82, page 20. However, a councilman who is not entitled to compensation does not hold an office of profit. Quarterly Report of Attorney General, Vol. 32, page 154.

Premises considered, I am of the opinion that you may not at one and the same time hold the offices of Register of the Circuit Court of Cullman County and councilman of the town of Hanceville, if a salary has been properly provided for said office of councilman. However,

you may hold both offices at one and the same time if no compensation is provided for said office of councilman.

Yours very truly,

MACDONALD GALLION

Attorney General

May 15, 1961

Honorable F. D. Main

Judge of Probate

Bullock County

Union Springs, Alabama

Motor Vehicles—Licenses—License Tags

1. The laws of this state do not require a migrant worker or any other person required to purchase a motor vehicle license in this state to surrender in doing so license plates which such person purchased in another state for the same year.

Opinion by Assistant Attorney General Burton.

Dear Sir:

I have your letter of April 28, 1961, which reads as follows:

"Does a person have to surrender his tag to the Tax Assessor when he comes into this State, and wants an Alabama tag?"

"We have cases of migrant workers, who work part of the year in other states, and come back to Alabama, which is their home, but go back after a few months stay here.

"We will appreciate your opinion as to whether the out-of-state tag has to be surrendered in order to get an Alabama tag."

Your question is answered in the negative. There are no provisions of law in this state that would require a migrant worker or any other person to surrender license tags purchased in another state in purchasing such tags in Alabama for the same year. In the case of certain commercial vehicles which are used by their owners in business activities in more than one state, a license tag is usually required to be purchased in each of the states in which such vehicles are so operated. To require such licensees to surrender license plates acquired in another

state under the circumstances property belonging to the state. The validity of such a claim is highly questionable.

Honorable Robert Newman

President Alabama

of Circuit Court

Troy, Alabama

Costs

Act No.

of 1957,

Act No. 3

Acts of 1958

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courts is

Opinion

Dear Sir:

Your request for an opinion, Act No. 359, is as follows:

"I would like an opinion on the following matters:

"1. In Equity Court, involving child custody decrees rendered in Alabama in support of maintenance cases in which the plaintiff is entitled to the old case, but is being re-

"2. Title 11, Sec. 89-1, by affidavit when the case is appealed to the trial court, convicted and be entitled to receive the case is disposed of