

OFFICE OF THE ATTORNEY GENERAL

83-00170



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

FEB 1 1983

This opinion has been modified by the opinion issued to John David Whetstone, District Attorney, dated 4-4-01, A.G. No. 2001-145:

FIXED TERM NOT REQUIRED FOR OFFICE OF PROFIT.

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Mr. Clemons Roe
Supernumerary Sheriff
Route Two, Box 677
Pell City, AL 35125

Supernumeraries -
Sheriffs -
Dual Compensation

Supernumerary sheriff may not hold another office of profit. Supernumerary sheriff may be employed by the State or a municipality in a position which is not an office of profit.

Dear Sheriff Roe:

The office of the Attorney General has received your opinion request which states that you are a supernumerary sheriff appointed pursuant to Act No. 79-357. You wish to know if your status as supernumerary sheriff prohibits you from being employed by another governmental entity such as the State of Alabama or a municipality. Specifically, you wish to know if any salary which you might receive during employment with another governmental entity would cause a reduction in your compensation under Act No. 79-357.

Constitution of Alabama 1901, §280 provides, in pertinent part, that no person shall "hold two offices of profit at one and the same time under this State. . . ." See also, Code of Alabama 1975, §36-2-1(b). The office of supernumerary sheriff is an "office of trust and profit." James v. Thompson, 392

Mr. Clemons Roe
Page Two

So. 2d 1178, 1180 (Ala. 1981). Anyone holding that office is prohibited from holding any other office of profit under this State. Therefore, it is our opinion that you, as supernumerary sheriff, are prohibited from serving the State or a municipality in an "office of profit."

An "office of profit" is one which "derives its authority directly from the state by legislative enactment; its duties and powers are prescribed by law; and its holder is vested with a portion of the powers of government, whether it be legislative, judicial or executive." Opinion of the Clerk, 386 So. 2d 210, 211 (Ala. 1980). One holds an "office of profit" if: 1) he exercises some part of the sovereign power of the State; 2) he has a fixed term of office; and 3) he receives compensation for the performance of his duties. Opinion of the Justice, 244 Ala. 386, 13 So. 2d 674.

You are not, however, prohibited from being employed by the State or a municipality in a position which is not an "office of profit." Nonetheless, it should be noted that Act No. 79-357, Section 6 requires that each supernumerary sheriff take the oath of office prescribed for sheriffs and be subject to call by the governor in the event of a vacancy in the office of sheriff. Thus, any position which you might accept must be one in which you could be available upon call by the governor.

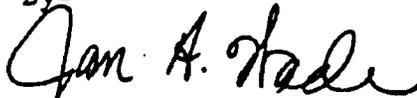
As to your inquiry concerning a reduction in your compensation under Act No. 79-357, this office has found no provision in that Act which would require a reduction because of any salary which you might receive during employment with another governmental entity.

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

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By-



JAN A. WADE
Assistant Attorney General

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