

OFFICE OF THE ATTORNEY GENERAL ⁸⁵⁻⁰⁰⁴⁹¹

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STATE OF ALABAMA

SEP 3 1985

ADMINISTRATIVE BUILDING
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Honorable William O. Killen
Mayor
Town of Lexington
P. O. Box 457
Lexington, Alabama 35648

Municipalities - City Councilmen -
Magistrates - Conflict of Interest -
Dual Compensation

Councilman can continue to serve
as member of Town Council if he
serves as a warrant magistrate for
county and receives only reimburse-
ment for expenses for his services
as magistrate.

Dear Mayor Killen:

Reference is made to the request by the Town Council of
Lexington for an opinion from the Attorney General regarding the
following question:

"By resolution adopted at its regular meeting
on the 5th day of August, 1985, the Town
Council requested me to seek an advisory
opinion from the Attorney General of the
State of Alabama as to the legality of
Councilman Keith Balch serving as a member
of the Town Council and at the same time
acting as Warrant Magistrate of Lauderdale
County, Alabama. Mr. Balch receives \$11.54
biweekly as Warrant Magistrate, which payment
is stated to be for his expenses incurred
in delivering affidavits to the Circuit
Court Clerk's office which is approximately
25 miles from Mr. Balch's place of residence.

I would greatly appreciate your advising as
to whether or not there is any prohibition

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Mayor
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against Mr. Balch's receiving this small stipend."

In a telephone conversation with the Town Clerk it was stated that the town councilman receives compensation for serving as a council member.

Section 280 of the Constitution of Alabama, 1901 prohibits an individual from holding more than one office of profit in this state. In Smith v. State ex rel. Mayor and Town Council of Citronelle, 276 Ala. 378, 162 So.2d 473 (1964), it was concluded by the Alabama Supreme Court that the office of town councilman is an office of profit when compensation is received for serving in that position.

The Clerk of the Supreme Court of Alabama determined in Opinion of the Clerk, Opinion NO. 27, 386 So.2d 210 (Ala. 1980) that the positions of district court and municipal court magistrates and warrant clerk are not offices of profit when these positions are appointed by the Administrative Office of Courts and are without compensation. The clerk in his opinion did not discuss whether these positions would be offices of profit if compensation was received, but it is indicated that such a conclusion would probably be reached.

However, the Alabama Supreme Court in Van Hart v. deGraffenried, 388 So.2d 1196 (Ala. 1980) concluded that an expense allowance or reimbursement for expenses is not compensation. Therefore, if a city or town councilman who serves as a warrant magistrate receives only an expense allowance or reimbursement for expenses as magistrate, he may serve in both positions. If the councilman receives compensation for services as warrant magistrate he cannot serve in both positions.

I hope that the question of the Town Council of Lexington has been adequately answered.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By:



LYNDA K. OSWALD
Assistant Attorney General