

OFFICE OF THE ATTORNEY GENERAL 91-00198



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Honorable Edward W. Enslin
Judge of Probate
Courthouse
One Commerce Street
Wetumpka, Alabama 36092

Sheriffs - Compensation - Term
of Office

Pursuant to Amendment No. 185
to the Constitution of Alabama,
1901, the Legislature may fix
the salary of the Sheriff of
Elmore County during his
current term of office.

Dear Judge Enslin:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

May the Legislature fix the salary of the
Sheriff of Elmore County during his current
term of office?

FACTS AND ANALYSIS

Sections 68 and 281 and Amendment No. 92 of the Constitu-
tion of Alabama, 1901 prohibit an increase or decrease in the
salary of county officers during the term of office in which
they are currently serving. Amendment No. 92 states that such
prohibition remains, "[a]ny provisions of this Constitution or
amendments thereto to the contrary notwithstanding."

Amendment No. 185 to the Constitution concerns the compensation of certain officers of Elmore County. It provides:

"The legislature may from time to time, by general or local laws applicable to or operative in Elmore county, fix, regulate, and alter the fees, commissions, allowances, and salaries, including the method and basis of their compensation, to be charged or received by the judge of probate, sheriff, tax assessor, tax collector, and clerk and register of the circuit court of Elmore county; and may place any or all of such officers on a salary and provide for the fees, commissions, allowances, and percentages collectible by such officers to be paid into the treasury from which their salaries are paid. Provided, that no law changing the method or basis for compensating such officers shall become effective unless it is approved by a majority of the qualified electors of the county who vote thereon at a referendum election held for such purpose."

Amendments to the State Constitution nearly identical to Amendment No. 185 have been ratified to enable the compensation and fees of officers in other counties of the state to be altered by the Legislature from time to time. Such Amendments were ratified for Jefferson County (Amendment No. 2), Morgan County (Amendment No. 44), and Lee County (Amendment No. 362), among others. In Hawkins v. Jefferson County, 233 Ala. 49, 169 So. 720 (1936), the Supreme Court of Alabama determined that Amendment No. 2, permitting the Legislature to alter from time to time the salary of any county officer of Jefferson County, brought these officers out of the restrictions of increases in the salary of an officer in his current term of Sections 68 and 281 of the Constitution. This same conclusion was reached by the Supreme Court for the officers of Morgan County covered by Amendment No. 44 in Almon v. Morgan County, 245 Alabama 241, 16 So.2d 511 (1944).

As for the effect of a subsequent amendment to the Constitution on the prohibitions of Amendment No. 92, the Attorney General discussed this in an opinion to the Honorable Ted Little, State Senator, 27th District, Auburn, dated April 24, 1984. The Attorney General concluded that Amendment No. 362, which contains nearly the same wording as Amendment No. 185 and which related to the compensation of the officers of

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Lee County, removed these officers from the prohibitions of Amendment No. 92 set out above because it was enacted subsequent to Amendment No. 92. Therefore, the Attorney General now concludes that Amendment No. 185 brings the Sheriff of Elmore County outside the prohibition of Amendment No. 92.

CONCLUSION

Pursuant to Amendment No. 185 to the Constitution of Alabama, 1901, the Legislature may fix the salary of the Sheriff of Elmore County during his current term of office.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:


JAMES R. SOLOMON, JR.
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