

OFFICE OF THE ATTORNEY GENERAL



94-00078

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

DEC 17 1993

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Jasper Fielding
Chairman
Coosa County Commission
P. O. Box 218
Rockford, AL 35136

Tax Collectors - Supernumerary
Status - Benefits - Spouses

Surviving spouse of supernumerary tax official, who died before the enactment of Act No. 88-878, entitled to receive benefits conferred therein.

Dear Mr. Fielding:

This opinion is issued in response to your request for an opinion from the Attorney General, and in reconsideration of the opinion we issued to you on November 23, 1993, A.G. No. 94-00045.

QUESTION

Pursuant to Section 40-6-3, Code of Alabama 1975, as last amended, is Elizabeth R. Mitchell, the widow of Posey H. Mitchell, deceased, a Supernumerary Tax Collector of Coosa County, Alabama, eligible for compensation as his surviving spouse?

FACTS, LAW AND ANALYSIS

Posey H. Mitchell was the tax collector for Coosa County, Alabama, for eighteen years. He served in the office from October 1, 1943, through September 30, 1961. He was born on September 27, 1903, and died June 30, 1978, at the age of 74 years. His declaration as a supernumerary tax collector pursuant to the provisions of Act No. 755, Regular Session of the 1967 Legislature was approved by Governor Lurleen B. Wallace on December 15, 1967. Thus, he was 64 years of age when he became a supernumerary tax collector.

Act No. 755 of the Regular Session of 1967 was the act which originated the office of supernumerary tax collector, tax assessor, license commissioner, etc. The statute, as amended, is found in Sections 40-6-1 through 40-6-8, Code of Alabama 1975, as last amended.

In 1988, Act No. 88-878 amended the statute to provide for a surviving spouse benefit. The pertinent portion of the amendment provides as follows:

"If any official covered under this chapter should die prior to attaining the age of 60 years, but being otherwise qualified to be appointed as supernumerary official, except for age, and be survived by a spouse lawfully married to such official at the time of his or her death, then such surviving spouse shall be paid a monthly allowance equal to 50% of the salary which would have been paid to such official had he or she survived to the age of 60. Said monthly allowance shall be paid in the same manner as herein provided for payment to a qualified official and shall continue for 15 years or until the marriage of said surviving spouse, whichever occurs first. Likewise, upon the death of any official covered under this chapter after he or she has become fully qualified for appointment as a supernumerary official, including age, whether appointed as a supernumerary official or still serving

in active office, the surviving spouse of such official shall be paid a monthly allowance equal to 50% of the supernumerary salary being paid to such official or to which he or she would be entitled if appointed as a supernumerary, said monthly allowance to be paid in the same manner herein provided for such official and to continue for 15 years or until the marriage of said surviving spouse, whichever occurs first."

In rendering our previous opinion to you, we had overlooked an opinion previously issued on November 9, 1989, to the Honorable Wayman G. Sherrer, County Attorney for Blount County, in which we considered circumstances very similar to those presented to your request. In that opinion we held:

"It is the opinion of this office that . . . the widow of a deceased supernumerary tax collector, qualifies for the survivor's benefits referred to in the above quoted portion of Section 40-6-3. Nowhere in Act 88-878 is there an indication that the legislature intended the benefits conferred therein to apply only to supernumerary officials who die after the passage of the act."

Upon reconsideration, it is our opinion that this holding should also apply to your question. However, we recommend that interested parties should apply to the legislature for clarification.

CONCLUSION

The widow of a supernumerary tax collector, who died prior to the passage of Act No. 88-878, is entitled to receive the benefits provided to surviving spouses of supernumerary officials in said Act. The prior opinion to you under date of November 23, 1993, holding to the contrary, is hereby withdrawn.

Honorable Jasper Fielding
Page 4

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:

A handwritten signature in cursive script, reading "James R. Solomon, Jr.", written in black ink.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/PCD/jho
F12.93/OP