

OFFICE OF THE ATTORNEY GENERAL

95-00216

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ATTORNEY GENERAL
STATE OF ALABAMA
MAY 11 1995

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Honorable James R. Knight
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The Griffith Building
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Cullman, AL 35056

District Attorneys -
Compensation - Supplements

Discussion of salary and
expenses of District Attorney
for Cullman County.

Dear Mr. Knight:

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

QUESTION

To what salary and expense allowance
is the District Attorney of Cullman County
entitled?

FACTS, LAW AND ANALYSIS

The Constitution of 1901 of Alabama provides, in Section
6.20 of Amendment 328, that a district attorney shall be
elected for each judicial circuit, for a term of six years
and ". . . he shall receive such compensation as provided by
law."

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The general law respecting salary for district attorneys is found at Ala. Code, 1975, § 12-17-182, and provides:

"The district attorneys for each judicial circuit in this state shall be paid by the state an annual salary of an amount equal to \$1,000.00 less than the salary paid by the state to circuit judges, payable as the salaries of other state officers are paid.

"All laws or parts of laws, general, special or local, in conflict with this section are hereby repealed; provided, that nothing in this section shall be construed to affect or reduce the compensation of any district attorney which is payable from any other source than the state treasury."

Local laws which provide for salary and expense allowances for the District Attorney for Cullman County are Act No. 71-1271, Act No. 71-1272 and Act No. 72-250 (3rd Special Session of 1971, passed in 1972).

Your question arises in part because of the language of Act No. 79-826, which was codified as § 12-17-30 of the Code. The language in question is subsection (3) which reads:

"Any salary supplement received by any circuit judge or district attorney which now exceeds \$11,000, or because of the enactment of this section will exceed such sum, is hereby reduced to the sum of \$11,000."

In an opinion to Clyde Cameron, Chairman of the Lawrence County Commission, dated September 20, 1982, A.G. No. 82-00560, this office considered the effect of Act No. 79-826. In that opinion we held:

"It is the opinion of this office that because of the specific language of Act 79-826, the \$11,000 ceiling placed on

salary supplements pertained only to the raise given by that act. It did not pertain to future raises and did not permanently supersede prior local salary supplement acts. . . ."

Expense allowances, denoted as such in the legislation providing them, are obviously not subject to limitations on salary.

The pertinent statutes in addition to § 12-17-182, quoted above, are Acts of 1971, No. 1271 and No. 1272, and Acts of 1972, No. 250. Acts of 1971, No. 1271 provides for an ". . . allowance for expenses. . . ." Acts of 1971, No. 1272 provides for ". . . additional compensation in the amount of two hundred and fifty dollars per month. . . ." (\$3,000 per year) Acts of 1972, No. 250 provides for an ". . . expense allowance. . . ."

It is our opinion that the purported salary cap set forth in § 12-17-30 has no effect upon the expense allowances set up in these statutes, and even if it were to apply to salaries provided after its enactment, it does not apply to the county supplement salary here under consideration, provided by Act No. 71-1272 as it is well under the limitation set by the purported cap.

Accordingly, it is the opinion of this office that the District Attorney of Cullman County should be paid a county supplement salary as allowed by § 12-17-182, Code, which includes additional compensation of \$250 per month pursuant to Act No. 71-1272. He may also receive expense allowances as provided in Act Nos. 71-1271 and 72-250 (enacted during the 3rd Special Session of 1971).

CONCLUSION

The District Attorney for Cullman County is to be paid, in addition to the state salary specified by § 12-17-182, a county supplement as allowed by § 12-17-182 and provided by local law, comprising additional compensation pursuant to Act No. 71-1272, as well as expense allowances pursuant to Act Nos. 71-1271 and 72-250 (3rd Special Session of 1971).

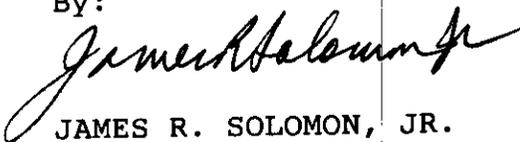
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I hope this sufficiently answers your question. If our office can be of further assistance, please contact Philip C. Davis of my staff.

Sincerely,

JEFF SESSIONS
Attorney General

By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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