



2009-072

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Probate Judges – Omnibus Pay Raise  
Bill – Compensation – Expense  
Allowance – Geneva County

The Geneva County Probate Judge is  
entitled to receive the salary as set out  
in sections 11-2A-2 and 11-2A-3 of the  
Code of Alabama, as well as any other  
previous expense allowances.

Dear Mr. Eldridge:

This opinion of the Attorney General is issued in response to your  
request on behalf of the Geneva County Commission.

QUESTION

What is the appropriate manner to cal-  
culate the salary of the probate judge?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that you seek  
clarification regarding the appropriate manner to calculate the annual sal-  
ary and expense allowance of the Geneva County Probate Judge. In your  
letter of request, you stated, in pertinent part, as follows:

In 2008, the Geneva County Commission adopted  
a resolution for Geneva County to become sub-  
ject to the provisions of Act No. 2000-108 [the  
Omnibus Pay Raise Bill], sections 11-2A-1  
through 11-24-8 of the Code of Alabama, as  
amended. The provisions of this act became

effective in Geneva County on September 30, 2008. Geneva County is a "Category 5" county. The probate judge also serves as the chairperson of the Geneva County Commission, and the probate judge is also the local official charged by law with the administration of a "one-stop" tag program. Prior to this act becoming effective in Geneva County, [the probate judge received an annual salary] pursuant to section 12-13-20 of the Code of Alabama, as amended . . . and by local acts [Act No. 88-415; 79-735; (GBLA) 1975, 2070; and (GBLA) 1971, 4555].

Section 11-2A-2 sets the annual salary of certain local officials. With regard to probate judges, this section states that "the annual minimum compensation for county commissioners and judges of probate in Category 5 shall be that amount prescribed by general law on September 30, 2000, plus a 17 percent increase . . ." ALA. CODE § 11-2A-2 (2008). Section 12-13-20 sets the compensation to be received by probate judges that also serve as the chair of the county commission. Based on section 11-2A-2, the Probate Judge of Geneva County is entitled to receive the salary specified in section 12-13-20, which is \$55,000, plus a 17 percent increase or \$64,350.

Section 11-2A-3 of the Code of Alabama also entitles the probate judge to receive additional compensation if the county does not choose to be exempt from these provisions. See ALA. CODE § 11-2A-2(7) (2008). Section 11-2A-3 of the Code states, in pertinent part, as follows:

(2) Any judge of probate in Category 4, 5, or 6 shall receive an additional two thousand five hundred dollars (\$2,500) in annual compensation if he or she is required to serve as chairperson of the county commission. This additional compensation shall be paid beginning on October 1, 2000.

(3) Any local official charged by law with the administration of a "one-stop" tag program shall receive annual compensation for such administration in an amount not less than three thousand dollars (\$3,000). Any additional compensation necessary to increase the official's salary to three thousand dollars (\$3,000) per year for such administration shall be paid beginning

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on October 1, 2000. The provisions of this subdivision shall not affect any local law that provides annual compensation for the administration of the "one-stop" tag program in excess of three thousand dollars (\$3,000).

ALA. CODE § 11-2A-3(2) & (3) (2008).

Based upon the information provided in your letter, pursuant to section 11-2A-1 through 11-2A-8 of the Code of Alabama, the Geneva County Judge of Probate is entitled a base salary of \$64,350, plus the additional amounts set out in section 11-2A-3(2) and (3).

Your letter also notes that, pursuant to local law, the probate judge also receives expense allowances that total \$10,800. In a subsequent conversation, you note that questions have arisen regarding whether the probate judge is still entitled to receive the expense allowances since Geneva County has chosen to adopt the Omnibus Pay Raise Bill ("Omnibus"). The Omnibus Pay Raise Bill does not specifically prohibit a probate judge from receiving previous expense allowances as the language in section 11-2A-2(1) regarding sheriffs prohibits a sheriff from receiving previous expense allowances under Omnibus.

This Office has previously determined that when an expense allowance is a reimbursement of an official's expenses in the performance of his or her duties, such funds should not be considered as compensation to that official. Instead, the expense allowance is a reimbursement of out-of-pocket expenses incurred by that official. Opinion to Honorable J. Robert Faulk, Attorney, Autauga County Commission, dated February 22, 2005, A.G. No. 2005-069; and opinion to Honorable Devon Kiker, Circuit Clerk, Russell County, dated October 19, 1979, A.G. No. 80-00027. As such, it is the opinion of this Office that the Geneva County Probate Judge is entitled to receive the salary as set out in sections 11-2A-2 and 11-2A-3 and all previous expense allowances.

This Office does note, however, that to the extent that the expense allowances being received by the probate judge are in excess of actual expenses incurred, then a portion of the expense allowances should be considered additional compensation. Opinions to Stanley A. Martin, Attorney, Lee County Commission, dated April 13, 2009, A.G. No. 2009-059, and to Honorable John Robinson, Member, House of Representatives, dated November 27, 2007, A.G. No. 2008-016.

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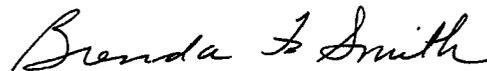
CONCLUSION

The Geneva County Probate Judge is entitled to receive the salary as set out in sections 11-2A-2 and 11-2A-3 of the Code of Alabama, as well as any other previous expense allowances.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/MMG  
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