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OFFICE OF THE ATTORNEY GENERAL

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Member, Alabama State Senate
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Wrongful Incarceration – Compensation –
Attorneys Fees – Franklin County

An applicant who is eligible for compensation for wrongful incarceration is not specifically entitled to reimbursement for attorneys' fees. The Committee on Compensation for Wrongful Incarceration ("Committee") has the discretion to recommend an additional amount of compensation above the base amount, if the Committee finds that circumstances warrant such a supplemental award.

Dear Senator Bedford:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Are applicants who are eligible for compensation for wrongful incarceration under section 29-2-159 of the Code of Alabama entitled to additional compensation for attorneys' fees?

FACTS AND ANALYSIS

The Legislature created a Committee on Compensation for Wrongful Incarceration, which is given the authority to certify applicants who have met the

eligibility requirements for payment of compensation in the amount specifically set forth in the statute and may recommend additional amounts of compensation to the Legislature. Section 29-2-159 of the Code of Alabama states as follows:

(a) If an applicant's eligibility is verified by the Division of Risk Management, the committee shall certify to the applicant an amount equal to fifty thousand dollars (\$50,000) for each year or the pro rata amount for the portion of each year of incarceration.

(b) The committee, after hearing testimony, *shall have the authority to recommend some discretionary amount in addition to the base amount if circumstances warrant such a supplemental award. Any such supplemental amount shall be in the form of a bill to be presented to the Legislature.*

(c) At the hearing on additional compensation the applicant may introduce evidence in the form of affidavits or testimony to support the additional compensation as provided in subsection (b) and the Attorney General or the local prosecutor's office under whose jurisdiction the case was prosecuted may introduce counter affidavits or testimony in refutation. *If the committee finds from the evidence that the applicant warrants additional compensation*, it shall recommend the amount the applicant is eligible to be paid for over the base amount and shall make a recommendation to the Legislature.

(d) The Comptroller upon proper certification from the committee shall pay the amount of the base award to the applicant out of any available state funds appropriated by the Legislature for such purposes. Any amounts for additional compensation passed by the Legislature will be paid as provided for in such legislation.

(e) The committee shall give written notice of its certifications within 10 days to all parties involved in the process as well as the appropriate state officials charged with processing the compensation. *The*

determination of the committee shall not be subject to review upon appeal of the claimant or the state.

ALA. CODE § 29-2-159 (2003) (emphasis added).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). Legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991).

The purpose of the wrongful incarceration statute is to provide some compensation for innocent persons that covers the time of their incarceration. The Legislature has specifically determined that an eligible applicant is entitled to \$50,000 per year of incarceration or a pro rata amount for a portion of a year. An applicant is not specifically entitled to attorneys' fees. If the intent of the Legislature was to provide attorneys' fees, the Legislature could have easily included language in the statute authorizing reimbursement or compensation for attorneys' fees. Such language was not included in this statute. Furthermore, nothing in the statute indicates that the purpose of the compensation is to reimburse an applicant for all expenses incurred by that person.

The Committee on Compensation for Wrongful Incarceration has the authority to recommend some discretionary amount in addition to the base amount if circumstances warrant such a supplemental award. ALA. CODE § 29-2-159(b) (2003). The statute does not provide any guidance as to when circumstances warrant such additional compensation above the base amount, except to require a hearing before the Committee wherein testimony may be given to support or to oppose the additional compensation. Thus, the recommendation for additional compensation is within the discretion of the Committee. The recommendation of the Committee is not subject to review on appeal.

CONCLUSION

An applicant who is eligible for compensation for wrongful incarceration is not specifically entitled to reimbursement for attorneys' fees. The Committee on Compensation for Wrongful Incarceration has the discretion to recommend an

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additional amount of compensation above the base amount if the Committee finds that circumstances warrant such a supplemental award.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS
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