# 2011-073

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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June 16, 2011

Honorable Huey Hoss Mack
Baldwin County Sheriff
310 Hand Avenue
Bay Minette, Alabama 36507

Honorable Jody Wise Campbell
Baldwin County Circuit Court Clerk
312 Courthouse Square, Suite 10
Bay Minette, Alabama 36507

Sheriffs – Service of Process and Summons – Funds – Circuit Clerks – Contracts

The Sheriff of Baldwin County ("Sheriff") may not contract with the Circuit Clerk of Baldwin County ("Circuit Clerk") or any other public or private entity regarding the implementation or collection of fees associated with Act 2009-615. This act specifically provides that such services will be performed by the designated court official in the respective district and circuit courts.

The Circuit Clerk may not contract with the Sheriff or subsequently deposit a portion of the funds into the Restitution Recovery Fund and expend those funds pursuant to Act 94-667.

Dear Sheriff Mack and Circuit Clerk Campbell:

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

## QUESTIONS

(1) May the Sheriff of Baldwin County contract with the Circuit Clerk of Baldwin County and pay her $1.00 per paper for providing services under the Civil Process Service Fee Act, Act 2009-615?

(2) May the Circuit Clerk receive such funds and place them in the Restitution Recovery Fund and expend them according to the terms of Act 94-667?

## FACTS AND ANALYSIS

In your letter of request, you informed this Office of the following:

> The Sheriff of Baldwin County has a local act that is called the Civil Process Service Fee Fund Act, Act 2009-615. The act provides that the Sheriff may contract with other governmental agencies concerning the implementation of this act. I would like to contract with the Circuit Clerk of Baldwin County to pay her $1.00 per paper to cover the cost of implementing the act. The Circuit Clerk has a fund found in Act No. 94-667. I would like to contract with the Circuit Clerk to put money into that fund. The Circuit Clerk would like to receive funds from the Sheriff and expend the funds as provided by that act.

Accordingly, you seek guidance as to whether the Sheriff of Baldwin County is authorized to contract with the Circuit Clerk to pay the Circuit Clerk a fee of $1.00 per document with regard to the implementation and processing of this act. In your inquiry, you also question whether the Circuit Clerk may deposit and expend these funds pursuant to Act 94-667.

As mentioned in your request, the Legislature passed Act 2009-615, which is known as the Baldwin County Sheriff Service of Process Serving Fund. In Sections (1)(d)(1) and (1)(d)(2) of this act, the court official is authorized to collect, in addition to all other existing fees, costs, charges

and judgments, a service-of-process fee of $20.00 in the criminal and civil divisions, respectively, in the district and circuit courts of Baldwin County. Sections (1)(d)(3) and (1)(e), which are pertinent to your request, state as follows:

> (3) ***The court official*** designated in Baldwin County by law for the respective courts ***shall collect the service of process fee*** designated in subdivisions (1) and (2) ***and remit_the fees collected to the sheriff*** for deposit in the fund.
>
> (e) ***The sheriff may use the monies*** generated by this section for law enforcement purposes in Baldwin County, ***as the sheriff sees fit, including contracting with or entering into a contract or agreement with a private, public or government entity for service of process of documents from the civil or criminal division of the district or circuit court.*** The funds shall not revert to the general fund of the county at the end of the fiscal year.

2009 Ala. Acts 2009-615, 1778, 1779 (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Section (1)(d)(3) of the act charges the appropriate personnel at the district and circuit court levels with collecting the Sheriff's Service of Process Fund amount and remitting the same to the Sheriff for deposit within that account. Section (1)(e) authorizes the Sheriff to use the funds to contract with public and private entities for service of process of documents from the various courts.

Act 2009-615 specifically sets out who is responsible for collecting and remitting monies from the Sheriff's Service of Process Fund to the Sheriff. The act, however, does not make provision for such personnel to take a portion of these monies. If the Legislature intended for a portion of the monies to be distributed to a clerk's fund, the Legislature could have clearly done so in Act 2009-615 in a manner similar to Act 94-667.

Although Act 2009-615 authorizes the Sheriff to contract with public or private entities, it is the opinion of this Office that the Legislature did not intend for this provision to be used as a means for the Sheriff to contract with an entity regarding the implementation or collection of the monies generated by Act 2009-615. Instead, the authority to contract is limited to matters regarding the service of process of documents from the civil and criminal divisions. Accordingly, it is the opinion of this Office that the Sheriff may not contract with the Circuit Clerk or any other public or private entity regarding the implementation of this act.

You also specifically ask whether the Circuit Clerk may contract with the Sheriff for a specified amount to help with the implementation of Act 2009-615 and whether the clerk had requisite authority to deposit and expend such funds pursuant to Act 94-667. Act 94-667 is the Restitution Recovery Fund for Baldwin County. This act authorizes the Baldwin County District Attorney to provide for collection and enforcement of court orders in certain cases of nonpayment. The act further provides for assessment of a collection fee and a mechanism for distribution for the collection fee and any other amount thereby collected. The Circuit Clerk, who is entitled to 25 percent of the collection fee, is directed to deposit such monies in the Circuit Clerk's Fund. The Circuit Clerk has broad discretion to expend such funds in the operation of the Circuit Clerk's Office.

The duties and functions of the Circuit Clerk are established by statutes, rules, court orders, and directives of the Administrative Office of Courts. Opinion to Honorable Karen K. Hall, District Judge, Twenty-Third Judicial Circuit, dated September 17, 2003, A.G. No. 2003-241. The general state laws do not give the circuit clerk the general authority to contract. Pursuant to section 12-17-94 of the Code of Alabama, a circuit clerk is authorized to perform such duties that are conferred by law upon the clerk. ALA. CODE § 12-17-94 (2006). Thus, in some cases, local acts such as Act 94-667 provide additional duties or funds to a circuit clerk.

Neither Act 2009-615 nor Act 94-667 authorize the Circuit Clerk to enter into contracts or put additional funds into the Circuit Clerk's Fund. Moreover, Act 2009-615 specifically requires that the Circuit Clerk collect and remit the service-of-process fee to the Sheriff. Because nothing authorizes the Circuit Clerk of Baldwin County to enter into a contract under these circumstances, or to take a portion of monies from the Sheriff's Service of Process Fund, it is the opinion of this Office that the Circuit Clerk is neither entitled to receive such funds nor place them in the Restitution Recovery Fund.

## CONCLUSION

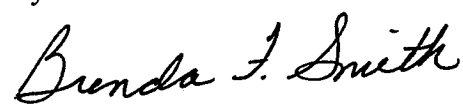
The Sheriff of Baldwin County may not contract with the Circuit Clerk of Baldwin County, or any other public or private entity, regarding the implementation or collection of fees associated with Act 2009-615. This act specifically provides that such services will be performed by the designated court official in the respective district and circuit courts.

Because neither Act 2009-615 nor Act 94-667 authorize the Circuit Clerk to contract under these circumstances, and Act 2009-615 specifically requires that the Circuit Clerk collect and remit the fees to the Sheriff, the Circuit Clerk may not contract with the Sheriff or subsequently deposit a portion of the funds into the Restitution Recovery Fund and expend those funds pursuant to Act 94-667.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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