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Honorable John W. Kelly, III  
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Selma, Alabama 36702-0303

Revenue Commissioners – Compensation –  
Expense Allowance – Counties – License  
Inspectors

The salary of the Dallas County License Commissioner is to be set in accordance with the schedule contained in section 40-6A-2 of the Code of Alabama, provided that the county governing body has passed a resolution authorizing the salary schedule.

The allowances provided in sections 11-2A-2 and 11-2A-3 of the Code are applicable to the Dallas County License Commissioner.

The Dallas County License Commissioner may receive additional compensation for performing the duties of the License Inspector.

Dear Mr. Kelly:

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

QUESTIONS

(1) Is the salary of the Dallas County License Commissioner to be set by the Dallas County

Commission in accordance with Act 718, which was approved in 1973, or is the salary to be set in accordance with section 40-6A-2 of the Code?

(2) Do the additional allowances provided for in sections 11-2A-2 and 11-2A-3 pertain to the Dallas County License Commissioner, which is an appointed office?

(3) Can Dallas County provide additional compensation to the Dallas County License Commissioner for performing the additional duties of License Inspector?

#### FACTS AND ANALYSIS

Your request states as follows:

The office of Commissioner of Licenses for Dallas County was created by Act 718, which was approved on August 30, 1973. It created the office of commissioner of licenses in counties in Alabama having a population of not less than 54,500, and not more than 56,000, inhabitants. When the office was created, the population of Dallas County fell within the population range specified by the statute. According to the last decennial federal census, the population of Dallas County is below the specified range. This act set the salary of the commissioner of licenses at not less than \$10,000 annually and provided that the salary "shall be based on a study of the duties and responsibilities of the office and the salary schedules applicable to like public officials in counties of comparable size." Subsequent to the adoption of said Act 718, the Legislature enacted general legislation, which has been codified in section 40-6A-2 of the Code of Alabama, establishing a minimum annual salary for license commissioners. Because the population of Dallas County is between 25,001 and 75,000 inhabitants, the minimum annual salary established by section 40-6A-2 is \$37,500.

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Your first question asks whether Act 718 or section 40-6A-2 of the Code dictates the salary of the Dallas County License Commissioner. Although Dallas County no longer has a population within the range specified by Act 718, this act still applies to the Dallas County License Commissioner because it is a population-based act enacted before 1978. Section 106.01 of the Recompiled Constitution of Alabama mandates that such acts "shall forever apply only to the county or counties or municipality or municipalities to which they applied on January 13, 1978, and no other, *despite changes in population.*" ALA. CONST. art. IV, § 106.01 (amend. 389) (emphasis added).

Act 718 is a general bill of local application that was passed in 1973, whereas section 40-6A-2 is a general law that was initially passed in 1982 and was last amended in 1990. The Supreme Court of Alabama has determined that the latest expression of the Legislature between conflicting statutes is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986). Therefore, section 40-6A-2 of the Code supersedes Act 718 regarding the salaries of license commissioners.

Section 40-6A-2 only takes effect, however, "upon approval by the county governing body of a resolution of authorization." ALA. CODE § 40-6A-2 (2003). If Dallas County has authorized the payment schedule by resolution, the salary for the Dallas County License Commissioner should be set in accordance with section 40-6A-2.

Your request also states that the Legislature subsequently enacted general legislation, codified in section 11-2A-2 of the Code, that authorizes the county commission to pay a license commissioner an expense allowance not to exceed \$10,000 per year. Also, section 11-2A-3 allows for any local official charged with the administration of a "one-stop" tag program to receive annual compensation in an amount not less than \$3,000. These duties are handled in Dallas County by the License Commissioner. Your second question asks whether the allowances in sections 11-2A-2 and 11-2A-3 are applicable to the Dallas County License Commissioner.

In determining the meaning of a statute, courts look to the plain meaning of the words as written by the Legislature. *DeKalb Co. LP Gas Co., Inc. v. Suburban Gas, Inc.*, 729 So. 2d 270 (Ala. 1998). "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." *IMED Corp. v. Sys. Eng'g Assocs. Corp.*, 602 So. 2d 344, 346 (Ala. 1992).

Section 11-2A-2 of the Code explicitly names the position of license commissioner among the list of local officials who may receive additional compensation pursuant to this provision. ALA. CODE § 11-2A-2 (2003). Nothing in this statute or section 11-2A-3 of the Code restricts its applicability to only elected license commissioners. Therefore, the Dallas County License Commissioner, who is appointed, may receive additional compensation pursuant to section 11-2A-2 of the Code.

This Office has opined that license commissioners who operate a one-stop tag program are entitled to the \$3,000 compensation mandated by section 11-2A-3 of the Code, as long as no other compensation has been provided for the service. Opinion to Honorable Billie H. Fore, License Commissioner, Clarke County, dated February 8, 2001, A.G. No. 2001-091. Accordingly, section 11-2A-3 of the Code is applicable to the Dallas County License Commissioner because the License Commissioner operates the one-stop tag program and is not otherwise compensated for doing so.

Finally, your request states that the Dallas County Commission is considering enlarging the duties of the License Commissioner to include the duties presently performed by the License Inspector, although the performance of the additional duties will require the License Commissioner to work additional hours, including after hours and on weekends. Your third question asks whether a license commissioner can receive additional compensation for performing the duties of a license inspector in addition to serving as license commissioner.

Section 280 of the Constitution of Alabama prohibits an individual from holding two offices of profit simultaneously. ALA. CONST. art. XVII, § 280. The holder of an office of profit receives compensation, has a fixed term in office, and exercises some part of the sovereign power of the state. Opinion to Honorable John David Whetstone, District Attorney, Baldwin County, dated April 4, 2001, A.G. No. 2001-145, *citing Opinion of the Clerk*, 386 So. 2d 210 (1980) and *Opinion of the Justices*, 254 Ala. 158, 47 So. 2d 591 (1950).

This Office has stated that the chief county appraiser does not exercise sovereign power over the state because the county commission appoints him or her and sets the salary. Opinion to Honorable Lesley Vance, Member, House of Representatives, dated July 17, 2001, A.G. No. 2001-223. Similarly, the county commission appoints the license inspector and sets his or her salary. ALA. CODE § 40-12-10 (2003). Therefore, the license inspector is an employee of the county commission and does not exercise some part of the sovereign power of the state.

A person may simultaneously hold the positions of license commissioner and license inspector because the position of license inspector is not an office of profit. That person may be compensated for performing the duties of both positions.

CONCLUSION

The salary of the Dallas County License Commissioner is to be set in accordance with the schedule contained in section 40-6A-2 of the Code, provided that the county governing body has passed a resolution authorizing the salary schedule.

The allowances provided in sections 11-2A-2 and 11-2A-3 of the Code are applicable to the Dallas County License Commissioner.

A license commissioner may receive additional compensation for performing the duties of the license inspector.

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