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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Thomas L. White, Jr.
State Comptroller
Department of Finance
100 North Union Street, Suite 220
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State Comptroller – Registrars,
Board of – Per Diem – County
Commissions – Reimbursement

Registrars are entitled to travel
reimbursement at the state per diem
rate.

Dear Mr. White:

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

QUESTION

Should the State of Alabama reimburse the county commission per diem paid to a member of the board of registrars in the same amount allowed for state employees?

FACTS AND ANALYSIS

Section 17-3-5(a) of the Code of Alabama provides for the reimbursement of registrars for travel and other expenses. This section provides, in pertinent part, as follows:

Each registrar shall receive a *mileage allowance equal to the amount allowed state employees* or employees of the county, whichever is greater, for official travel in the course of attending the business of the board, including attending

continuing education programs. *Travel and other expenses* shall be paid by the county commissions to the boards of registrars and the state shall reimburse the county commissions based on a written request submitted by the county commissions to the state Comptroller.

ALA. CODE § 17-3-5(a) (2006) (emphasis added).

Reimbursement for state travel is provided for at section 36-7-20, *et seq.*, of the Code of Alabama. ALA. CODE §§ 36-7-20 to 36-7-25 (2001 & Supp. 2010). Section 36-7-20 provides for a per diem for in-state travel. Section 36-7-21 provides for actual expenses for out-of-state travel. Section 36-7-23 states that the state travel statutes “shall apply to all officers and employees of the State of Alabama or any of its . . . boards.” ALA. CODE § 36-7-23 (2001). This Office has concluded that members of state boards are entitled to reimbursement at the state rate. Opinions to Honorable Robert B. Leavell, Administrator, Alcoholic Beverage Control Board, dated May 12, 1997, A.G. No. 97-00185; Dr. David L. Barnhart, Chairman, Board of Examiners in Counseling, dated April 6, 1984, A.G. No. 84-00241; J.W. McLane, Secretary, Alabama State Board of Pharmacy, dated November 6, 1981, A.G. No. 82-00069; Honorable John A. Horton, Chairman, Alabama State Board of Auctioneers, dated January 6, 1981, A.G. No. 81-00159.

Registrars are designated as judicial officers. ALA. CODE § 17-3-6 (2006). This Office has explained in a previous opinion that “[r]egistrars “are paid a salary from the State that is disbursed by the county commissions. ALA. CODE § 17-4-153 (1995). Some registrars, under local acts, also receive county supplements. Registrars are not, however, considered state employees except for purposes of social security protection and benefits. *Id.*” Opinion to Honorable Lesley Vance, Member, House of Representatives, dated July 1, 2004, A.G. No. 2004-171, at 2. (section 17-4-153 is now codified as section 17-3-5).

The Alabama Supreme Court, however, has clarified that, generally, the board of registrars is an agency of the state with the statewide purpose of operating the election system. *Garner v. McCall*, 235 Ala. 187, 178 So. 210 (1938). *Accord, United States v. State of Alabama*, No. 2:06-cv-392-WKW, 2006 WL 1598839 (M.D. Ala. June 7, 2006) (unpublished). Consistent with *Garner*, this Office has concluded that a registrar is a state officer for purposes of the prohibition against holding two offices of profit at the same time. Opinion to Honorable John A. Tinney, Attorney,

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Randolph County Commission, dated December 13, 2004, A.G. No. 2005-031, *citing Mitchell v. Wright*, 69 F. Supp. 698 (M.D. Ala. 1947). Because the board of registrars is a state board, a registrar is entitled to the state per diem for travel.

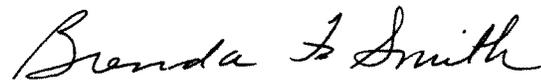
CONCLUSION

Registrars are entitled to travel reimbursement at the state per diem rate.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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