2011-103

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September 23, 2011

Honorable Ashley Rich
Mobile County District Attorney's Office
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Honorable Jay M. Ross
Mobile County Attorney
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Mobile, Alabama 36644-1001

THIS OPINION HAS BEEN MODIFIED BY AN OPINION ISSUED TO JOHN MARK TIREY, WALKER COUNTY SHERIFF, DATED OCTOBER 30, 2012, A.G. NO. 2013-009.

District Attorneys – County Commissions – Employees, Employers, Employment – Funds

The Mobile County Commission is required to fund the salaries of up to 28 assistant district attorneys, as determined by the district attorney under Act 82-675.

The county is required to fund the salaries at the level requested by the district attorney if that amount is based on a revised salary schedule that has been approved by the county.

The county bears the cost of increases to the salaries because of an increase in salaries of state employees.

The county is required to fund the salaries of up to eight legal stenographers working as legal secretaries who have been employed by the district attorney.

The county may provide equipment and supplies for general operations.

The district attorney and the county should work together to provide and fund the district attorney at the most efficient level consistent with the needs of the public and available funds.

Dear Mrs. Rich and Mr. Ross:

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

QUESTIONS

(1) Is the Mobile County Commission required to fund the salaries of 28 assistant district attorneys?

(2) Is the county obligated to pay the district attorney for a deficiency in funding for the salaries of assistant district attorneys?

(3) May the county offset its obligation by increasing the State's funding obligation of $15,000 per assistant district attorney ("ADA") to $23,200 per ADA on the ground that the higher figure represents corresponding increases in salaries of state employees since 1988?

(4) Is the county required to fund the salaries for eight employees who perform the duties of a legal stenographer? If so, is the county required to pay the minimum wage rate of $15,080 per employee? Are the duties of a stenographer the same as the duties of a court reporter?

(5) Is the county required to provide equipment and supplies for general operations?

(6) Is the county required to provide equipment and supplies for the district attorney's investigators?

(7) Is the district attorney's claim of a deficiency in funding for prior fiscal years barred by the statute of nonclaim?

FACTS AND ANALYSIS

The request from Mrs. Rich states as follows:

> Act 82-675, as amended by Act 88-423, provides that the Mobile County Commission shall fund the salaries of 2 assistant district attorneys per circuit court judge (there are 11 circuit court judges), 1 ADA per district court judge (there are 5 district court judges), and 1 chief ADA, for a total of 28 ADAs. Of the total salary paid to each ADA and to the chief, $15,000 shall be paid by the State and the remainder by the county. Thus, according to the formula established by the act, the county is required to pay for 27 ADAs and 1 chief.
>
> The amount of salary to be paid to each ADA and the chief for the first six years is set out specifically in the act. Further, the act provides that salaries are to be computed by means of levels and steps. To determine present day salaries, the district attorney has used the incremental increases in levels and steps as scheduled in the act and projected the current salaries in order to comply with the intent of the act. A schedule of the present day ADA salary levels as projected is attached.
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> The attached table shows the amounts in which the county has been deficient in funding for the district attorney for fiscal year 2011 only. The figures provided are for the salaries of 27 ADAs and 1 chief based on annual projections of the incremental increases built into the schedules set forth in the act, beginning with the last step on the schedule. The table shows that approximately 1.65 million dollars is due to the district attorney from the county.

> In addition, Act 82-675 provides that the county shall fund eight legal stenographers. The annual compensation for stenographers under the act is set at below minimum wage of from $1400 to $12,000 per year.

The request from Mr. Ross states that the district attorney submitted a letter to the county dated May 3, 2011, requesting, in addition to supplemental funding for the current fiscal year, an amount for which the district attorney has been underfunded for fiscal years 2003-2004 through 2009-2010, pursuant to Act 82-675.

Act 82-675, enacted in the 1982 First Special Session of the Alabama Legislature, is a local act applicable to Mobile County providing for the staff of the district attorney. 1982 Ala. Acts No. 82-675, 109. Section 1 of the act specifically provides for the number of assistant district attorneys, their compensation pursuant to a schedule of salaries, and the funding for their compensation. *Id.* at 625-26. In 1988, the Legislature amended section 1, including increasing the salaries in the salary schedule. 1988 Ala. Acts No. 88-423, 626. Act 82-675 has not been amended since. Section 1 of Act 88-423, as amended, now states as follows:

> (a) The District Attorney of the Thirteenth Judicial Circuit shall be authorized to appoint ***two assistant district attorneys for each Circuit Court Judge*** of the Thirteenth Judicial Circuit ***and one assistant district attorney for each District Court Judge*** of the Thirteenth Judicial Circuit. . . .
>
> (b) The District Attorney shall be authorized to appoint ***one full-time Chief Assistant District Attorney*** in addition to the assistant district attorneys authorized in §1(a).
>
> (c) The ***total annual compensation*** to be paid the Chief Assistant District Attorney and each of the assistant district attorneys ***shall be as provided in the schedule of salaries*** set out below and shall be computed by the use of Levels and Steps.
>
> Levels may refer to the amount of legal experience. It is intended to permit an attorney with applicable

> legal experience to commence such office at a higher rate of pay than one who has less applicable legal experience. Steps shall refer to the amount of time that such assistant district attorney has served in the office as assistant district attorney or the length of time that such officer shall continue. The intention of this provision is to allow minimum annual increases in salary as incentive for an assistant district attorney to continue to serve in such office, provided that in the opinion of the District Attorney such assistant district attorney has performed satisfactorily to merit such increases in salary.
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> The schedule of salaries shall be as follows:

	Step 1 Beginning Salary	Step 2 1 Year	Step 3 2 Years	Step 4 3 Years	Step 5 4 Years	Step 6 5 Years
Chief	$60,000	61,500	63,000	64,500	66,000	67,500
Level 1	$48,000	50,000	52,000	54,000	56,000	58,000
Level 2	$36,000	37,700	39,900	41,100	42,300	43,500
Level 3	$28,000	29,200	30,400	31,600	32,800	34,000

> (d) Of the total annual compensation to be paid the aforementioned chief assistant district attorney and assistant district attorneys, ***each shall be paid an annual salary by the State of Alabama of $15,000.00***, payable from the general funds of the state in equal installments as the salaries of other state officers are paid. ***The remainder of the annual compensation as provided in the schedule of salaries hereinabove set out***, of each of the aforementioned chief assistant district attorney and assistant district attorneys ***shall be paid by the county*** comprising the Thirteenth Judicial Circuit, which sum shall be paid from the general funds of said County, in equal installments as the salaries of other county officers are paid.

1988 Ala. Acts No. 88-423, 625-26 (emphasis added).

Section 1(a) authorizes the district attorney to appoint two ADAs per circuit judge and one per district judge. In addition, section 1(b) authorizes the

district attorney to appoint one chief ADA. Because there are eleven circuit judges and five district judges in Mobile County, a total of 28 ADAs may be appointed, including the chief ADA. Section 1(c) requires that the chief and other ADAs be paid a salary listed in the salary schedule. Section 1(d) provides for a portion of each salary to be paid by the state and a portion by the Mobile County Commission. The state is required to pay $15,000 and the county the remainder of each employee's salary listed on the salary schedule. These sections contain no requirement of county approval for the number of ADAs. Thus, the county is required to fund the salaries of up to 28 ADAs, as determined by the district attorney.

The salary schedule and the funding obligations of the State and county may not be deviated from, except in accordance with section 13 of Act 82-675. This section provides, as follows, for the revising of the salaries:

> ***Prior to the commencement of each fiscal year, the District Attorney may request*** either ***from*** the State of Alabama or the governing body of ***the County*** comprising the Thirteenth Judicial Circuit, or both, ***additional increases in the salaries of all Assistant District Attorneys. Should funds be available*** either from the State of Alabama or the governing body of the County comprising the Thirteenth Judicial Circuit, or both, the District Attorney of the Thirteenth Judicial Circuit ***may revise the salary schedule*** in Section 1 of this Act.

1982 Ala. Acts No. 82-675, 109, 113 (emphasis added). This section provides that the county may approve across-the-board increases to the salaries in the salary schedule at the time of the adoption of the county budget. Accordingly, the county is required to fund the salaries of ADAs at the level requested by the district attorney if that amount is based on a revised salary schedule that has been approved by the county.

Section 14 of the act further provides, as follows, for the revising of the salaries in response to an increase in the salaries of state employees:

> At any time that the Legislature of the State of Alabama shall approve any ***increase in the salaries of State employees***, and at any time that the governing body of the County comprising the Thirteenth Judicial Circuit shall approve an increase in the salaries of

> County employees, the ***salaries paid employees of the District Attorney*** for the Thirteenth Judicial Circuit ***shall be increased accordingly***; ***and the schedules of salaries*** paid personnel of the District Attorney's Office as set out in the provision of this Act ***shall be increased.***

Id. (emphasis added).

Mr. Ross argues that, consistent with the practice of the county and Mrs. Rich's predecessor, this section provides for corresponding increases in the funding portion of the State with each increase in salaries of state employees. He specifically argues that a contrary interpretation would violate the prohibition against unfunded mandates for the counties, which is found in section 111.05 of article IV of the Recompiled Constitution of Alabama. ALA. CONST. art. IV, § 111.05 (amend. 621).

"[I]t is the longstanding policy of this Office to decline to give opinions on the constitutionality of a statute, rule, regulation, policy, or practice. Constitutional questions are best addressed by a court of competent jurisdiction. *See, e.g.*, opinions to Honorable Bob Riley, Governor, dated May 10, 2007, A.G. No. 2007-096; Honorable Mike Hubbard, Member, House of Representatives, dated March 9, 2007, A.G. No. 2007-057; and to Honorable R. Scott Lewis, Attorney, Baldwin County Board of Education, dated January 31, 2006, A.G. No. 2006-046." Opinion to Honorable John F. Porter, III, Attorney, Jackson County Commission, dated March 25, 2011, A.G. No. 2011-048, at 4.

Mr. Ross also specifically argues that section 14 must be read with the language, "[s]hould funds be available . . from the . . . County," qualifying the salary increases in section 13. The courts have stated that in resolving conflict between statutory provisions, whenever possible, statutes must be construed *in pari materia* in the light of their application to the same general subject matter. *Opinion of the Justices* No. 334, 599 So. 2d 1166, 1168 (Ala. 1992); *Bynum v. Campbell*, 419 So. 2d 1370, 1374 (Ala. 1982). Sections 13 and 14 do not conflict because, although both address salary increases, they each address different types of increases. Section 13 provides for a special increase for ADAs while section 14 is concerned with a general increase for all state employees.

Section 14 merely increases the salaries listed in the salary schedule, not the funding portion of the State. Under the well-established rules of statutory construction, where a statute enumerates certain things on which it is to operate,

the statute must be construed to exclude all things not expressly mentioned. *Ex parte Holladay,* 466 So. 2d 956, 960 (Ala. 1985). Where, as here, the Legislature has chosen not to give the county the authority to offset its funding portion by increasing the State's portion, it is the opinion of this Office that the county may not do so. Therefore, a salary revised under this section remains subject to the funding distribution set forth in section 1(d), as amended. Because the State's portion is fixed, the county bears the increased costs.

Regarding stenographers, Mrs. Rich correctly states that the county is required to fund eight legal stenographers. Section 7 of the act specifically authorizes the district attorney "to appoint not less than five nor more than eight ***legal stenographers***" whose "compensation shall be payable from the general fund of the County." 1982 Ala. Acts No. 82-675, 112 (emphasis added). This Office declines to opine on that part of this issue concerning applicability of the federal minimum wage provisions because opinions of this Office are limited to matters of state law.

Mr. Ross argues that a "legal stenographer" is a court reporter. Black's Law Dictionary does not define "legal stenographer" or "stenographer." Nor is the former term defined in Webster's Third New International Dictionary. That dictionary, however, does define "stenographer" as "1: a writer of shorthand 2: one who is employed (as in an office) chiefly to take and transcribe dictation." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2236 (2002). "Court reporter" is defined as "[a] person who ***records testimony, stenographically*** or by electronic or other means, and, when requested, prepares a transcript . . . Also termed (in BrE) ***official shorthand writer***." BLACK'S LAW DICTIONARY 391 (8th ed. 2004) (emphasis added). Thus, a stenographer is someone who takes shorthand generally, while a court reporter is a stenographer who takes shorthand in legal proceedings.

This reading is supported by the common usage of "stenographer" throughout the Code of Alabama, which indicates that the meaning of the term varies depending on the context in which it is used. For example, it is true that it is clearly intended as a court reporter in statutes providing for administrative hearings of state licensing boards. *E.g.*, ALA. CODE § 34-22-8(a) (2002) (Board of Optometry); ALA. CODE § 34-24-276(b) (Supp. 2010) (Board of Podiatry); and ALA. CODE § 34-37-12 (2002) (Plumbers and Gas Fitters Examining Board). On the other hand, it is equally used in statutes providing for general employment authority for various positions. *E.g.*, ALA. CODE § 11-50-439 (2008) (municipal waterworks utility board); ALA. CODE § 41-6-9 (2000) (Department of Archives and History); and ALA. CODE § 41-9-345 (2000) (USS Alabama Battleship Commission).

Section 6 of the act, the section immediately preceding the section on stenographers, authorizes the district attorney "to appoint a Grand Jury ***Reporter***." 1982 Ala. Acts No. 82-675, 112 (emphasis added). If the Legislature had intended for the stenographers to perform the duties of a court reporter, it would have used "reporter" in relation to both positions. Accordingly, a "***legal*** stenographer" is simply a person who takes shorthand who works in the legal field, i.e., a legal secretary.

Regarding funding owed the district attorney for equipment and supplies, section 12 of the act addresses these items for general use, providing that the county "***may*** . . . purchase . . . necessary equipment, office supplies, and other items. *Id.* at 113 (emphasis added). Mr. Ross correctly states that this section permits the county to provide equipment and supplies at its discretion. In contrast, the act makes separate provision for the supplies of investigative staff in section 2(d). Mr. Ross acknowledges that this section states that the county "***shall*** purchase" equipment and supplies for the investigators, but points out that this language is followed by the phrase, ***upon application by the District Attorney***." *Id.* at 111 (emphasis added). He argues that the letter from the district attorney dated May 3, 2011, requesting funding does not constitute such an application. This Office makes determinations of law and not of fact. ALA. CODE § 36-15-1(1)(a) & (b) (2001); opinions to Honorable Frank H. Riddick, Madison County Probate Judge, dated July 28, 1998, A.G. No. 98-00190 (declining to determine whether an investment portfolio was on the statutory list of permissible investments for a conservator).

Regarding the limitations period on the district attorney's claim of underpayment in funding for prior fiscal years, section 6-5-20(a) of the Code of Alabama "dictates that . . . claims must be presented to the county commission prior to commencing legal action against the county." Opinion to Honorable Mary F. Gunter, Attorney, Henry County Health Care Authority, dated December 30, 2002, A.G. No. 2003-058, at 4; *see also*, ALA. CODE § 6-5-20(a) (2005). "Code of Alabama 1975, § 11-12-1 through § 11-12-16 concerns the filing of claims and demands against a county to be audited and paid, reduced, or disallowed by the county commission." Opinion to Honorable Tommy Fields, Chairman, Escambia County Commission, dated September 4, 1991, A.G. No. 91-00395, at 2. Mr. Ross correctly states in his request that claims against the county are generally subject to the one-year statute of nonclaim in section 11-12-8.

This Office, however, has explained an exception to the statute of nonclaim as follows:

> The Courts of this state have held on several occasions that salary or compensation due a public county officer need not be presented to the governing body of the county for allowance. Kirkland v. Jefferson County, 244 Ala. 69, 12 So. 2d 347 (Ala. 1943); Jefferson County v. O'Gara, 29 Ala. App. 267, 195 So. 267 (Ala. App. 1939). ***The one year statute of limitations provided by § 11-12-8 would thus not apply to such claims.*** (Informal Opinion of the Attorney General, Dec. 9, 1980)[.]
>
> ***Claims for salary or compensation are in the nature of a contract and would be subject to the six year statute of limitations found in § 6-2-34.*** Kirkland, supra . . . .

Opinion to James L. Martin, County Attorney, dated March 8, 1983, A.G. No. 83-00220, at 1-2 (emphasis added).

The Alabama Supreme Court, in *Kirkland,* addressed the claim of a deputy sheriff. In addition to the *Martin* opinion, which addressed the claim of a coroner, this Office has consistently applied this rule to various county officers. See, e.g., the following opinions:

- Honorable Floyd Hambrick, Jr., Jackson County Judge of Probate, dated September 20, 2000, A.G. No. 2000-238 (probate judge);
- Honorable Tom Sowa, Attorney, Calhoun County Commission, dated October 7, 1994, A.G. No. 95-00005 (circuit clerk);
- Honorable James D. Hughston, Attorney at Law, dated October 9, 1990, A.G. No. 91-00017 (tax collector, circuit clerk, and district judge);
- Honorable Sam Collins, Judge of Probate, Fayette County Commission, dated December 9, 1980, A.G. No. 81-00114 (registrar);
- Honorable John H. Jackson, Jr., Attorney, Chilton County Commission, dated December 6, 1979, A.G. No. 80-00112 (commission chairman).

Regardless, questions of liability involve factual determinations that are generally not answered by the Attorney General. Opinions to Honorable Chad A. Fincher, Member, House of Representatives, dated December 31, 2009, A.G. No. 2010-027; Honorable James B. Johnson, Baldwin County Sheriff, dated January 30, 2006, A.G. No. 2006-044; Honorable Freddie C. Green, City Council, City of Greensboro, dated September 13, 1999, A.G. No. 99-00280. As this Office stated in considering the applicable statute of limitations on a similar claim against the county, "[t]he county's liability for underpayment is limited by that statute and may involve factual questions which we cannot address." Opinion to Honorable William D. Russell, Judge, Etowah District Court, dated May 29, 1997, A.G. No. 97-00193, at 3.

This opinion does not address the funding provided to the district attorney in past fiscal years. Section 36-15-1(1)(d) of the Code of Alabama prohibits this Office from issuing opinions on moot questions; that is, questions on events that have already occurred. ALA. CODE § 36-15-1(1)(d) (Supp. 2010). Accordingly, this opinion should be applied prospectively to the current and future fiscal years. Opinions to Honorable John F. Porter, III, Attorney, Jackson County Commission, dated March 25, 2011, A.G. No. 2011-048 (annual distributions of in-lieu-of-tax payments received from the Tennessee Valley Authority); Honorable Terry Spicer, Member, House of Representatives, dated December 20, 2005, A.G. No. 2006-035 (education funds). The district attorney and the county should work together to provide and fund the district attorney at the most efficient level consistent with the needs of the public and available funds.

CONCLUSION

The Mobile County Commission is required to fund the salaries of up to 28 assistant district attorneys, as determined by the district attorney under Act 82-675.

The county is required to fund the salaries at the level requested by the district attorney if that amount is based on a revised salary schedule that has been approved by the county.

The county bears the cost of increases to the salaries due to an increase in salaries of state employees.

The county is required to fund the salaries of up to eight legal stenographers working as legal secretaries who have been employed by the district attorney.

The county may provide equipment and supplies for general operations.

The district attorney and the county should work together to provide and fund the district attorney at the most efficient level consistent with the needs of the public and available funds.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

Brenda F. Smith

BRENDA F. SMITH
Chief, Opinions Division

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