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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Education, Boards of – Superintendents –
Expense Allowance – Retroactive
Payments

The Clarke County Board of Education may pay the current superintendent of education the monthly expense allowance provided by Act 152 (1973). This payment should cover the entire term of the superintendent from 2009 to the present. Because the current superintendent had a right to this payment at the time services were rendered, section 68 of the Recompiled Constitution of Alabama does not prohibit the retroactive payment of the expense allowance.

Dear Mr. Wilson:

This opinion of the Attorney General is issued in response to your request on behalf of the Clarke County Board of Education.

QUESTION

Can the Clarke County Board of Education retroactively pay the current superintendent of education the monthly expense allowance provided by Act 152 (1973), which constitutes reimbursement for travel expenses incurred in the performance of his duties within the boundaries of Clarke County?

If the answer is in the affirmative, may the payment be made retroactively to the date the superintendent assumed office in January 2009?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that, in and around June 1985, the expense allowance provided by Act 152 to the school superintendent was discontinued based on an agreement between the Clarke County Board of Education ("Board") and the Superintendent of Education in office at that time. Although the expense allowance ceased to be disbursed, the salary of the Clarke County Superintendent was increased prior to the beginning of each term until the term of the current superintendent, when no adjustment occurred. At all times, the salary of the superintendent remained within the salary margins specified within Act 152. Even though the current superintendent was not a party to the agreement, there has been no payment of the expense allowance.

Currently, you question whether the Clarke County Board of Education is authorized to pay the superintendent the monthly expense allowance provided by Act 152; and, if so, whether such payment may be made retroactively to the date that the current superintendent assumed office. Act 152 states, in pertinent part, as follows:

The County Superintendent of Education of Clarke County shall receive an annual salary not to exceed the sum or an amount equal to the highest paid to any teacher or principal in the county school system plus an amount equal to 50% of such highest paid salary. The salary herein provided for the Superintendent of Education shall be fixed by the County Board of Education and shall be payable in equal monthly installments out of the county funds available for such purpose. ***In addition to such salary, the Superintendent of Education shall be allowed an expense allowance of \$200.00 per month*** as constituting reimbursement for travel expenses incurred in the performance of his duties within the boundaries of Clarke County. Travel expenses for out of county or out of state travel shall be reimbursed on the basis of actual expenses incurred in the performance of his duties as County Superintendent of Education.

1973 Ala. Acts No. 152, 190, 190.

This act authorizes the Superintendent of Education of Clarke County to receive an expense allowance in addition to the salary being received. The requirements set out in Act 152 predate the term of the current superintendent

and also provide the basis of the previous contractual arrangement for the position of Clarke County Superintendent of Education.

Section 68 of the Recompiled Constitution of Alabama prohibits extra compensation after services have been rendered, i.e., retroactive payments. This section states as follows:

The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office. . . .

ALA. CONST. art. IV, § 68.

This provision is applicable to county and municipal authorities. Section 68, however, does not prohibit the payment for services previously rendered where the right to compensation arose at the time services were rendered. Opinion to Honorable William W. Dillard, Jr., Chief Examiner, Department of Examiners of Public Accounts, dated May 11, 1982, A.G. No. 82-00336 (determining that Section 68 permitted a county board member to be paid for services rendered in years past where the right to compensation arose at the time the services were rendered). This Office has also noted that section 68 does not prohibit retroactive payments where there is an expectation or agreement of payment. *See, generally*, opinion to Honorable John F. Porter, III, Attorney, Jackson County Commission, dated August 11, 2010, A.G. No. 2010-091.

Based on the information provided, the current superintendent had a right to payment of the expense allowance once he assumed office in 2009 because Act 152 specifically authorizes such payment. Moreover, based upon Act 152, any person that assumes the office of superintendent would have a reasonable expectation of receiving the expense allowance discussed therein. As such, it is the opinion of this Office that the Clarke County Superintendent of Education should receive payment for the expense allowance mentioned in Act 152 from the point he assumed office until the present. Such allowance should continue to be administered in the future until such point in time that the law is amended or changed.

You informed this Office that the current superintendent took office in 2009. Although not relevant to this particular inquiry, there is a six-year statute of limitations for actions on simple contracts. ALA. CODE § 6-2-34 (2005); *Dillard*, at 2.

CONCLUSION

The Clarke County Board of Education may pay the current superintendent of education the monthly expense allowance provided by Act 152. This payment should cover the entire term of the superintendent from 2009 to the present. Because the current superintendent had a right to this payment at the time services were rendered, section 68 of the Recompiled Constitution of Alabama does not prohibit this type of retroactive payment of the expense allowance.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:

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

BRENDA F. SMITH
Chief, Opinions Division