



2013-022

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

January 11, 2013

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Honorable James K. Taylor
Circuit Clerk of Escambia County
314 Belleville Avenue
Post Office Box 856
Brewton, Alabama 36427

Supernumerary Status – Office of
Profit – Employees, Employers,
Employment – Circuit Clerks

A part-time, non-policymaking,
clerical position with a local county
unit of government is not an office
of profit. A supernumerary circuit
clerk may be employed with a unit
of local county government in a
clerical non-policymaking position.

Dear Mr. Taylor:

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

QUESTION

May a supernumerary circuit clerk accept
employment with a local county government in
a clerical, non-policymaking, part-time position
without jeopardizing his supernumerary status?

FACTS AND ANALYSIS

According to your request, you will soon be eligible for
supernumerary status pursuant to section 12-17-140 of the Code of
Alabama. Upon assuming supernumerary status, you are contemplating
accepting employment with another unit of local county government in a
part-time, non-policymaking, clerical position. You question whether

acceptance of this employment opportunity would jeopardize your supernumerary status.

Section 280 of the Constitution of Alabama and section 36-2-1 of the Code of Alabama prohibit a person from simultaneously holding two offices of profit. ALA. CONST. art. XVII, § 280; ALA. CODE § 36-2-1 (2001). An "office of profit" is a position wherein the officeholder: (1) exercises some part of the sovereign power of the state and (2) is entitled to compensation for the performance of the duties of the office. *Opinion of the Justices* No. 64, 244 Ala. 386, 13 So. 2d 674 (1943); opinion to Honorable Michael G. Kendrick, Attorney, Homewood City Council, dated April 27, 2012, A.G. No. 2012-057; opinion to Honorable Larry Means, Member, Alabama State Senate, dated May 5, 2006, A.G. No. 2006-093. A supernumerary circuit clerk holds an office of profit. *Means* at 2.

With respect to your potential part-time county clerical position, this Office has previously determined that a part-time county EMA director was merely an employee subject to the direction and control of the county commission and, therefore, did not hold an office of profit. Opinion to Honorable Chad Harless, Pickens County Coroner, dated May 8, 2007, A.G. No. 2007-095. This Office has also previously stated that a county deputy sheriff does not hold an office of profit because a deputy does not exercise some portion of the sovereign power of the state. Opinion to Honorable Rae B. Ware, Town Clerk, Town of Snead, dated March 9, 2009, A.G. No. 2009-048, *citing* opinions to Honorable Tracy L. Hawsey, Sheriff of Conecuh County, dated September 5, 2003, A.G. No. 2003-235 and Honorable Frank "Butch" Ellis, Jr., State Senator, dated September 25, 1984, A.G. No. 84-00468.

Therefore, because your new employment will be that of a clerical employee of the county commission, you will not be engaging in policymaking or exercising the sovereign power of the state. Accordingly, your new position is not an office of profit.

CONCLUSION

A part-time, non-policymaking, clerical position with a local county unit of government is not an office of profit. A supernumerary circuit clerk may be employed with a unit of local county government in a clerical non-policymaking position.

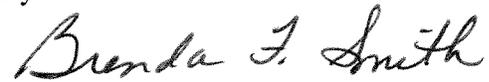
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:

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

BRENDA F. SMITH
Chief, Opinions Division

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