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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Mike Rainey
Cullman County Sheriff
1910 Beech Avenue, SE
Cullman, Alabama 35055

Sheriffs – Omnibus Pay Raise Bill –
Compensation

Sheriff Rainey is entitled to receive the same base salary as his predecessor, along with all salary increases that were not conditioned on his predecessor's length of service or experience.

If Sheriff Rainey is entitled to receive back pay, six percent should be deducted from any moneys received pursuant to section 36-22-61 of the Code of Alabama.

If Sheriff Rainey is entitled to receive back pay, the Sheriff and the commission should cooperate to determine the payment terms of any back pay.

Dear Sheriff Rainey:

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

QUESTIONS

Is the current Cullman County Sheriff, Sheriff Rainey, entitled to receive the same salary as his predecessor?

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If Sheriff Rainey was, and is, entitled to receive his predecessor's salary, how should Cullman County compensate him for the back pay that Sheriff Rainey did not receive? Specifically, will six percent of the back pay be withheld pursuant to section 36-22-60 of the Code?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that after assuming office in 2010, you received a base salary that was less than that of your predecessor. As such, you now question whether the Omnibus Pay Raise Bill ("Bill") requires or entitles a newly elected official to the same pay as that of his or her predecessor.

The Omnibus Pay Raise Bill is codified in sections 11-2A-1 through 11-2A-8 of the Code of Alabama. ALA. CODE § 11-2A-1 to 11-2A-8 (2008). This bill created a uniform minimum compensation to be paid to certain elected county officials. These provisions also set forth a mechanism by which persons subject to the Bill would receive increases in compensation. Your particular inquiry, however, questions the compensation to which a successor to the office is entitled.

This Office has answered similar inquiries in the past. In those matters, this Office determined that a successor to an elected position that is compensated in accordance with the Bill is entitled to the base salary established by that Bill, as well as any merit raises, cost-of-living increases, or other increases given to the previous public official that are not based on the length of service or experience. Opinion to Honorable Wayne Gruenloh, Chairman, Baldwin County Commission, dated February 5, 2007, A.G. No. 2007-029 at 14; opinion to Honorable C. Mark Erwin, Mobile County Attorney, dated September 26, 2005, A.G. No. 2005-199. Based on the foregoing, it is the opinion of this Office that Sheriff Rainey is entitled to the base salary, as established by Omnibus Pay Raise Bill, along with all other increases received by his predecessor that were not based on length of service or experience.

If Sheriff Rainey is entitled to back pay, you question whether six percent of the back pay should be withheld pursuant to section 36-22-61 of the Code. Section 36-22-61 of the Code sets forth payroll deductions for the supernumerary program and states, in pertinent part, as follows:

The governing body of each county shall begin deducting, upon July 19, 1979, and each month thereafter, from the salaries of such sheriffs an amount equal to six percent of the monthly salary paid such sheriff. Such sum shall be deducted monthly and paid into the general fund of the county. If any sheriff, subject to the provisions of this article, shall end his tenure of office prior to having reached age of 55 years, but having had 16 years of service as a law enforcement officer, 12 of which have been as sheriff, his supernumerary allowance as set out in Section 36-22-62, shall be vested and held in the general fund of the county until he attains the age of 55, at which time, or any time thereafter, he may elect to become a supernumerary sheriff as set out in Section 36-22-60. If any sheriff, subject to the provisions of this article, shall end his tenure of office prior to having had 16 years of service as a law enforcement officer, 12 of which was served as sheriff, as provided herein, an amount equal to the total paid by him into the general fund of the county under the provisions of this section, shall be repaid to him.

ALA. CODE § 36-22-61 (2001).

The moneys collected as a result of the six percent deduction referenced in section 36-22-61 of the Code, will eventually be used to fund the sheriff's compensation as a supernumerary sheriff. Failure to properly fund the supernumerary program could lead to a deficit in the amount of funds later available to Sheriff Rainey as a supernumerary. Accordingly, if Sheriff Rainey is entitled to back pay, it is the opinion of this Office that, pursuant to section 36-22-61 of the Code, six percent should be deducted from any amount received.

Finally, you also question how Cullman County should compensate you for any back pay to which you may be entitled. Recently, this Office was asked to opine as to whether a sheriff would be entitled to a lump-sum or installment payments if it was determined that the Sheriff was entitled to back pay. Opinion to Honorable John Mark Tirey, Sheriff of Walker County, dated October 30, 2012, A.G. No. 2013-009. In that

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opinion, this Office noted that if the sheriff was entitled to back pay, such amount would be immediately due and payable. The opinion further advised that the county commission and the sheriff should cooperate in determining the payment terms for any back pay as the sheriff may need to weigh possible tax ramifications and the commission may need to weigh possible fiscal concerns. *Id.* at 7-8. This Office notes that the statute of limitations for claims for back pay is two years. *Id.* at 1.

CONCLUSION

Sheriff Rainey is entitled to receive the same base salary as his predecessor, along with all salary increases that were not conditioned on his predecessor's length of service or experience.

If Sheriff Rainey is entitled to receive back pay, six percent should be deducted from any moneys received pursuant to section 36-22-61 of the Code.

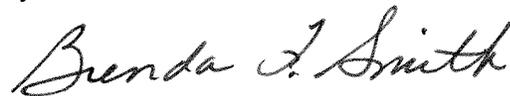
If Sheriff Rainey is entitled to receive back pay, the Sheriff and the commission should cooperate to determine the payment terms of any back pay.

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

LS/MMG

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