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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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September 24, 2013

Honorable John E. Enslin
Probate Judge of Elmore County
Post Office Box 10
Wetumpka, Alabama 36092

Probate Judges – Manufactured
Housing – Registration – Ad
Valorem Taxes - Funds

The Probate Judge of Elmore County has unilateral discretion to determine how the accumulated moneys received pursuant to section 40-12-255(a) shall be expended as long as any expenditures relate to the performance of the official duties of the office of probate judge.

While the Probate Judge of Elmore County is required to present the county commission with information regarding all estimated revenue to be received into the general fund and all possible expenditures that may be expended from the general fund, the funds received by the probate judge's office pursuant to section 40-12-255(a) are not subject to the appropriation and budget restrictions of section 11-8-3(f) of the Code.

Dear Judge Enslin:

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

QUESTIONS

Does the Probate Judge of Elmore County have unilateral discretion to determine how the accumulated moneys received pursuant to section 40-12-255(a) shall be expended as long as any expenditures relate to the performance of the official duties of the Office?

Can the Probate Judge of Elmore County be required by the Elmore County Commission to annually budget said moneys in advance of expenditure and thus be restricted in their expenditures by budgeted category?

FACTS AND ANALYSIS

Section 40-12-255 of the Code of Alabama, a provision of the general law, discusses, among other things, the registration fee assessed against various manufactured homes. Subsection (a) of that provision also sets forth the manner in which such funds shall be distributed. Section 40-12-255(a) states, in pertinent part, as follows:

The official collecting such registration fees and issuing such identification decals in evidence of payment thereof shall also collect a \$5 issuance fee to be distributed as follows: \$4 to the county general fund if the issuing official is on salary and if the issuing official is on the fee system, then the \$4 issuance fee shall go to the issuing official, ***and the remaining \$1 shall accrue to an account in the office of the county treasurer for use by the issuing official or designated representative***, and such accumulated moneys shall be used only for performance of his or her official duties.

Ala. CODE § 40-12-255(a) (2011) (emphasis added).

Pursuant to section 45-26-81.41 of the Code of Alabama, a local law applicable to Elmore County, the duties of the Elmore County Revenue Commissioner, with regard to the assessment and collection of registration fees for manufactured homes, were transferred to the Elmore

County Probate Judge. Specifically, this provision states, in pertinent part, as follows:

The Revenue Commissioner of Elmore County is relieved of all duties and responsibilities relating to the assessment and collection of taxes on motor vehicles and manufactured homes. **The judge of probate shall receive the commissions and fees now allowed the revenue commissioner for performing these functions and these fees and commissions shall be remitted to the county general fund.** Reporting and remitting of the collections of these fees shall be made by the judge of probate or as otherwise required by statute.

ALA. CODE § 45-26-81.41 (2011) (emphasis added).

Nothing within section 45-26-81.41, nor in section 40-12-255, specifically dictate the manner in which the \$1, which accrues in a separate account to the benefit of the probate judge, must be expended. Accordingly, it is the opinion of this Office that it is within the probate judge's discretion to expend these funds as long as such expenditures relate to the performance of official duties of the office of probate judge.

In your second inquiry, you seek guidance regarding the authority of the Elmore County Commission to appropriate and budget these funds. Section 11-8-3 of the Code of Alabama sets forth the authority and certain procedures regarding the annual budget. This provision states as follows:

(a) It shall be the duty of the county commission, at some meeting in September of each calendar year, but not later than October 1, to prepare and adopt a budget for the fiscal year beginning on October 1 of the current calendar year which shall include all of the following:

(1) An estimate of the anticipated revenue of the county for all public funds under its supervision and control including all unexpended balances as provided in Section 11-8-6.

(2) An estimate of expenditures for county operations.

(3) Appropriations for the respective amounts that are to be used for each of such purposes.

(b) The appropriations made in the budget shall not exceed the estimated total revenue of the county available for appropriations.

(c) The budget adopted, at a minimum, shall include any revenue required to be included in the budget under the provisions of Alabama law and reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law.

(d) *In order that the budget adopted is based upon an estimate of revenue and operating expenditures as nearly correct as possible*, at least 60 days before the meeting of the county commission at which the county budget is adopted:

(1) *Any public official who receives public funds*, including any official entitled to ex officio fees, or *who issues any kind of order payable out of the county treasury without approval of such county commission shall furnish to the county commission in writing an estimate of the revenue and of the anticipated expenditures the official will be called upon to make during the next fiscal year.*

(2) The judge of probate, tax officials, sheriff, county treasurer, and any other county official or employee named by the county commission shall prepare and submit to the county commission an itemized estimate of the amount the official or employee believes to be necessary for personnel, office supplies, and other expenditures during the following fiscal year. Any official entitled to ex officio fees shall include in his or her estimate the estimated amount of any ex officio fees the

official will receive during the following fiscal year.

(e) Based upon the estimated revenue and expenditures set out in subsection (d), together with any other financial information available to the county commission regarding the anticipated revenue and expenditures for the next fiscal year, the county commission shall approve a budget which includes the expenditures it deems proper for the next fiscal year.

(f) Following the adoption of the budget, no obligation incurred by any county official or office over and above the amount or amounts approved and appropriated by the county commission shall be an obligation of the county unless the obligation is approved by an affirmative vote of a majority of the members of the county commission.

ALA. CODE § 11-8-3 (2008) (emphasis added).

The overarching tenet expressed in this statute is to make county governments aware of all the revenue being received and all possible expenditures from various departments. Pursuant to section 11-8-3(d)(1) of the Code, the probate judge is required to supply the county commission with information in writing regarding all the estimated revenue to be received by that office that will be transferred to the general fund as well as all potential expenditures for that office.

Section 11-8-3(d)(2), however, states that in instances where an official is entitled to the funds received, only an estimate of the amount to be received needs to be given to the county commission. ALA. CODE § 11-8-3 (2008). This Office has previously stated that funds specifically directed to the county official are public funds that must be included in an estimate of revenue to be furnished to the county commission under section 11-8-3(d) of the Code. Opinion to Honorable Luke Cooley, Houston County Judge of Probate, dated February 11, 2009, A.G. No. 2009-041. There is, however, no requirement that the official provide an estimate of the specific expenditure of these funds.

The monies received pursuant to section 40-12-255(a) are monies to which the office of Probate Judge of Elmore County is entitled.

Accordingly, it is the opinion of this Office that pursuant to section 11-8-3(d)(2) of the Code of Alabama the Probate Judge of Elmore County is only required to inform the Elmore County Commission of the expected revenues to be received pursuant to section 40-12-255(a) of the Code of Alabama. These funds are not being appropriated to the probate judge by the county commission, thus, they are not subject to the appropriation and budget restrictions set forth in section 11-8-3(f) of the Code.

CONCLUSION

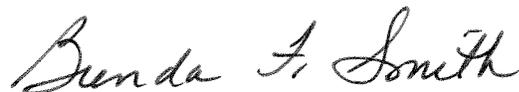
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division