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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

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501 WASHINGTON AVENUE  
P.O. BOX 300152  
MONTGOMERY, AL 36130-0152  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

Honorable Rich Hobson  
Administrative Director of Courts  
Administrative Office of Courts  
300 Dexter Avenue  
Montgomery, Alabama 36104-3741

Supernumerary Status – Court Reporters –  
Judges – Employees, Employers,  
Employment

The position of judicial secretary is not an office of profit. A supernumerary court reporter could, therefore, work as a judicial secretary without vacating the position of supernumerary court reporter, but could only be compensated for the higher-paying position, then resume receiving supernumerary pay upon completing the work of judicial secretary.

Dear Dr. Hobson:

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

QUESTIONS

(1) Would section 36-2-1(b) of the Code of Alabama prevent a supernumerary court reporter from also working as a judicial secretary?

(2) Can the supernumerary court reporter waive supernumerary pay to receive the pay of judicial secretary until such time as the individual leaves state service and then returns to his or her status as a supernumerary court reporter receiving supernumerary pay?

FACTS AND ANALYSIS

Section 36-2-1(b) of the Code provides the following:

No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state, nor shall any person hold two offices of profit at one and the same time under this state, except constables, notaries public and commissioners of deeds.

ALA. CODE § 36-2-1(b) (2001).

In addition, section 280 of the Alabama Constitution provides as follows:

No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds.

ALA. CONST. art. XVII, § 280.

The Alabama Supreme Court has held that an office of profit is one where the officeholder exercises some part of the sovereign power of the state and is entitled to compensation for performance of the duties of the office. *See Opinion of the Justices* No. 64, 244 Ala. 386, 13 So. 2d 674 (1943). An office of profit is one that “derives its authority directly from the state by legislative enactment; its duties and powers are prescribed by law; and its holder is vested with a portion of the powers of government, whether it be legislative, judicial or executive.” *Opinion of the Clerk* No. 27, 386 So. 2d 210 (Ala. 1980).

This Office has previously determined that a supernumerary circuit clerk is an office of profit. *Opinion to Honorable Fred L. Huggins, Clarke County Judge of Probate, dated August 11, 1988, A.G. No. 88-00416.* We, however, have not specifically addressed this status in regard to either a supernumerary court reporter or a judicial secretary. In supporting our conclusion that a supernumerary circuit clerk is an office of profit, this Office noted that “[a] supernumerary circuit clerk takes the oath of office prescribed for clerks, fills any vacancy in the office of circuit clerk in that county, serves for life, and receives an annual salary . . . . Thus, a supernumerary circuit clerk also holds

an office of profit.” Opinion to Honorable Larry Means, Member, Alabama State Senate, dated May 5, 2006, A.G. No. 2006-093.

Section 12-17-291 of the Code provides the following:

Such *supernumerary* circuit court reporter shall take the oath of office prescribed by the Constitution for judicial officers and shall have and exercise all the duties, power and authority of official circuit court reporters of the circuit courts of Alabama and shall, upon request of the circuit judge or presiding judge of the circuit wherein said supernumerary circuit court reporter resides, attend any regular, adjourned or special session of the circuit court thereof.

ALA. CODE § 12-17-291 (2012). Section 12-17-292 further provides that the supernumerary court reporter shall “serve for life and receive annually a salary equal to 50 percent of the state salary payable to official circuit court reporters, payable out of the State Treasury. . . .” ALA. CODE § 12-17-292 (2012).

A supernumerary court reporter derives his or her authority directly from the state by legislative enactment, has duties and powers that are prescribed by law, exercises a portion of the sovereign power of the state, takes an oath, fills vacancies, serves for life, and receives annual compensation. A supernumerary court reporter is thus also an office of profit.

Section 12-17-340(b) provides the following:

[E]ach circuit and district court judge may employ a confidential secretary without regard to civil service qualifications or regulations, to serve at the pleasure of the judge. However, before the appointment thereof, the Administrative Director of Courts shall certify to the state Comptroller and presiding circuit judge of the respective circuit that such a secretary is needed. The compensation of confidential secretaries shall be fixed by the Administrative Director of Courts.

ALA. CODE § 12-17-340(b) (2012).

Although a confidential judicial secretary is provided for by statute and receives compensation, a judicial secretary cannot be said to exercise any authority or sovereign powers of the state, takes no oath of office, has no statutory duties, no planning or policymaking role, and serves only at the pleasure of the judge. A judicial secretary is thus not an office of profit.

Because a judicial secretary is not an office of profit, as long as the work of the judicial secretary does not prevent a supernumerary court reporter from filling court reporter vacancies within the county, a supernumerary court reporter could perform work as a judicial secretary without vacating the supernumerary position. Both positions could be performed by the same individual without violating the prohibition against holding two offices of profit simultaneously.

With regard to your second question, section 36-6-3 of the Code states that “[w]henver the duties of more than one office, position or employment shall be filled, performed or discharged by one officer or employee, such officer or employee shall only receive the salary named for the highest paid office, position or employment so filled, performed or discharged.” ALA. CODE § 36-6-3 (2001).

Although a supernumerary court reporter could perform work as a judicial secretary without vacating the supernumerary position, he or she still could “only receive the salary named for the highest paid office, position or employment so filled[.]” *Id.*

#### CONCLUSION

A supernumerary court reporter is an office of profit. A judicial secretary is not an office of profit. A supernumerary court reporter could, therefore, work as a judicial secretary without vacating the position of supernumerary court reporter, but could only be compensated for the higher paying position, then resume receiving supernumerary pay upon completing the work of judicial secretary.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division