



2014-030

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Alan Bailey, Chairman
Washington County Commission
45 Court Street
Chatom, Alabama 36518

County Commissions – Circuit Clerks –
Expense Allowance – Local Laws –
Supplements – Salaries – Referendum
Election – Compensation

The provisions of Act 2012-180 decreasing the compensation of the Circuit Clerk of Washington County take effect if approved by the voters at a referendum election as required by Section 2 of the Local Amendments for Washington County of the Recompiled Constitution of Alabama.

Dear Chairman Bailey:

This opinion of the Attorney General is issued in response to your request on behalf of the Washington County Commission.

QUESTION

Must Act 2012-180 be approved by a referendum election before it becomes effective?

FACTS AND ANALYSIS

You ask this Office to clarify our opinion to you dated June 4, 2013, A.G. No. 2013-051. That opinion stated that the salary supplement received by the Circuit Clerk of Washington County under Act 84-549 will cease on January 14, 2014. The *Bailey* opinion addressed the effective date of Act 2012-180, which expressly repealed Act 84-549,

under the plain language of the repealing act. 2012 Ala. Acts No. 2012-180.

You question whether the Washington County Commission can rely on the *Bailey* opinion in light of the fact that, as you state in your request, Act 2012-180 has not been approved by a referendum election. The answer to your question turns on an interpretation of the language authorizing the act in section 2 of the Local Amendments for Washington County of the Recompiled Constitution of Alabama, which provides as follows:

The legislature may from time to time, by general or local laws applicable to or operative in Washington County, fix, regulate, and alter costs and charges of courts and the fees, commissions, allowances, and salaries, including the method and basis of their compensation, to be charged or received by the judge of probate, the tax assessor, the tax collector, and the circuit clerk; and may place any or all of such officers on a salary and provide for the fees, commissions, allowances, and percentages collectible by such officers to be paid into the treasury from which their salaries are paid. ***Provided that no law changing the method or basis for compensating such officers shall become effective unless it is approved by a majority of the qualified electors of the county who vote thereon at a referendum election held for such purpose*** or is approved by a majority of the qualified electors of the county who vote on the adoption of this constitutional amendment as provided for in section 2 hereof [section 2 of Acts 1975, No. 611]. (Amendment 349).

ALA. CONST. LOCAL AMENDS., Washington County § 2 (amend. 349) (emphasis added).

The Alabama Supreme Court has considered whether a referendum election was required to approve a general law increasing docket fees under a similar local constitutional amendment. *Holsbrooks v. Stacy*, 830 So. 2d 708 (Ala. 2002) (construing section 2 of the Local Amendments for Bibb County of the Recompiled Constitution of Alabama). In doing so,

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the Court examined the various groups of amendments authorizing changes to court costs and charges, as well as compensation of county officials. The Court used an amendment for Cleburne County as an example of the group with referendum language identical to the amendment for Washington County, explaining that “[t]he referendum clause in Amendment No. 331 unequivocally dictated that ‘no law’ passed by the Legislature *on this subject*, applicable to Cleburne County, ‘shall become effective’ unless approved in a referendum vote by the people in Cleburne County.” *Id.* at 714 (emphasis added). Consistent with that opinion, Act 2012-180 must be approved by a referendum election before it becomes effective.

CONCLUSION

The provisions of Act 2012-180 decreasing the compensation of the Circuit Clerk of Washington County take effect if approved by the voters at a referendum election as required by Section 2 of the Local Amendments for Washington County of the Recompiled Constitution of Alabama.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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