2014-070

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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

June 27, 2014

Honorable Gorman Nicky Whitehead
Chairman, Fayette County Commission
103 First Avenue Northwest
Suite 2
Fayette, Alabama 35555-2641

Sheriffs – Supernumerary Status – Convictions – Refunds – Felony – County Commissions – Fayette County

A sheriff that is removed from office by reason of a felony conviction forfeits his or her years of service credit as sheriff that predated his or her conviction.

A sheriff ending his or her tenure of office prior to 16 years of service as a law enforcement officer, 12 of which were served as sheriff, is entitled to repayment of funds withheld from his or her salary to participate in the sheriff's supernumerary program.

Dear Chairman Whitehead:

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

QUESTION

Is a sheriff who was removed from office upon conviction of a felony entitled to the payment of funds withheld from his salary for participation in the sheriff's supernumerary program prior to May 5, 1989?

FACTS AND ANALYSIS

According to your request, Hubert Norris, former Sheriff of Fayette County, has requested the return of approximately $31,000 deducted from his

salary pursuant to his election to participate in the supernumerary sheriff's program during his terms of office, the first of which ended on May 5, 1989, and the second of which ended on January 16, 2007. Information received subsequent to your original request indicates that the sums withheld during his second term have already been refunded. Thus, a determination of the appropriate disposition of those funds is moot, and this opinion will only address the funds withheld prior to May 5, 1989.

The tenures of Hubert Norris were both tumultuous and litigious. As set forth by the Alabama Supreme Court, the undisputed facts and procedural history are as follows:

> Norris held the office of Sheriff of Fayette County for consecutive four-year terms beginning June 1974 until his resignation in May 1989. As sheriff, Norris participated in the county's supernumerary sheriffs' benefit program; an amount equal to 6% of Norris's monthly sheriff's salary was deducted from his paycheck and paid into the general fund of Fayette County.
>
> On May 4, 1989, during his fourth term in office, Norris resigned as sheriff pursuant to a plea agreement in federal court. As part of the plea agreement, Norris pleaded guilty to multiple federal felonies, including racketeering, bribery, and tax evasion. Norris was convicted in accordance with the plea agreement, was sentenced to 37 months in prison, and was fined $25,000. On March 14, 1994, Norris received a full pardon from the Alabama State Board of Pardons and Paroles, which restored all of his civil and political rights that had been forfeited by virtue of his 1989 conviction.
>
> On August 29, 1994, then Governor Jim Folsom, Jr., appointed Norris as supernumerary sheriff of Fayette County, pursuant to § 36–22–60, Ala. Code 1975. The Commission thereafter petitioned for a writ of quo warranto, seeking to have Norris excluded from that office pursuant to § 36–9–2, Ala. Code 1975. The Fayette Circuit Court issued the writ, and Norris appealed. On appeal, this Court held that § 36–9–2 precluded Norris from serving as supernumerary sheriff after having received a pardon. *Norris v. Humber,* 674 So.2d 77 (Ala.1995) ("*Norris I*").

In November 2002, Norris ran for and was reelected as Sheriff of Fayette County. Norris served as sheriff from January 2003 until January 2007, and he contributed to the supernumerary sheriffs' benefit program for each of those years. The State of Alabama thereafter petitioned for a writ of quo warranto, alleging that Norris had unlawfully held the office of sheriff, again relying on § 36–9–2. The circuit court entered a summary judgment in favor of Norris, and the Commission appealed. In *State v. Norris,* 879 So.2d 557 (Ala.2003) ("*Norris II* "), this Court affirmed the summary judgment in favor of Norris, holding that § 36–9–2 did not bar Norris from holding the office of sheriff after having been pardoned, because he claimed that office by virtue of his election, not appointment after his pardon.

On November 27, 2006, toward the end of Norris's term as sheriff, the Commission sought a legal opinion from the attorney general regarding the county's obligation to pay Norris any supernumerary sheriff's benefits. On December 1, 2006, Norris filed with then Governor Bob Riley a written declaration seeking to become a supernumerary sheriff for Fayette County at the end of his term as sheriff; Norris stated in that declaration that he met all the requirements to be appointed as a supernumerary sheriff pursuant to § 36–22–60(2). On January 9, 2007, Governor Riley commissioned Norris as supernumerary sheriff of Fayette County; the commission was countersigned by the secretary of state. On January 10, 2007, the attorney general issued an opinion stating that Norris was "not qualified to hold the office of supernumerary sheriff because, by virtue of his 1989 conviction, he forfeited the benefits of his entire incumbency as Sheriff of Fayette County that predated his conviction." Op. Att'y Gen. No. 2007–032 (January 10, 2007).

On February 15, 2007, the Commission sought another legal opinion from the attorney general regarding whether Norris's appointment to the office of supernumerary sheriff by Governor Riley affected the status of Norris with regard to his supernumerary benefits. On May 7, 2007, the attorney general advised the Commission that, because Governor Riley had already appointed Norris as supernumerary sheriff, the

> question was moot. On May 17, 2007, Governor Riley's chief legal advisor purported to rescind Norris's appointment to the office of supernumerary sheriff after learning of his 1989 felony conviction.
>
> On March 2, 2011, Norris filed with the Fayette Circuit Court a petition for a writ of mandamus compelling payment of past and future supernumerary sheriff's benefits. Norris and the Commission thereafter filed cross-motions for a summary judgment based upon a joint stipulation of uncontested material facts. On January 28, 2013, the trial court entered a summary judgment in favor of the Commission, concluding as a matter of law that Norris had not served as sheriff for the requisite number of years as required by § 36–22–60(2) and that Governor Riley's appointment of Norris as supernumerary sheriff was void ab initio; the trial court therefore dismissed Norris's petition for a writ of mandamus.

Norris v. Fayette County Comm'n, 1120573, ___ So. 3d ___ (Ala. 2013) (2013 WL 5298582) ("*Norris III*"). The Supreme Court affirmed the trial court's summary judgment against Norris and the dismissal of Norris' petition. *Id.* at *8.

It is the opinion of this Office that Hubert Norris is entitled to the return of the moneys in question. Section 36-22-61 of the Code of Alabama sets forth the limited circumstances under which the moneys withheld may be repaid to a sheriff who elected to participate in the sheriff's supernumerary program.

> ***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.*** In the event a sheriff should die in office prior to his eligibility, then, in that event, the total amount paid by him to the general fund of the county hereunder shall be paid to his named beneficiary. In the event a sheriff dies in office who immediately prior to his death was eligible for supernumerary status but had not elected to be commissioned as a supernumerary sheriff, then, in that event, his spouse shall be entitled to the same benefits as if he had elected to be commissioned as a

> supernumerary sheriff. In the event of the death of any supernumerary sheriff in whose favor a monthly retirement allowance is accruing, his spouse shall be entitled to a monthly allowance equal to 50 percentum of the retirement allowance the supernumerary sheriff was receiving when he died, as hereinafter specified, for a period of up to 15 years.

ALA. CODE § 36-22-61 (2013) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Thus, a sheriff is only entitled to repayment of the amounts withheld if he or she ends his or her tenure with less than 16 years of service as a law enforcement officer, 12 of which was as sheriff.

Although Norris had more than 16 years of service as a law enforcement officer, 12 of which was as sheriff, the Alabama Supreme Court specifically determined that Norris had "forfeited all of his years of service credit as sheriff that predated his conviction, not just the four-year term that ended upon his conviction." *Norris III* at *4. Thus, for purposes of service years as sheriff towards supernumerary status before his conviction, Norris has zero years of credit. Accordingly, under the plain language of section 36-22-61 of the Code, Norris is entitled to be repaid an amount equal to the total he paid into the general fund of the county pursuant to the sheriff's supernumerary program.

CONCLUSION

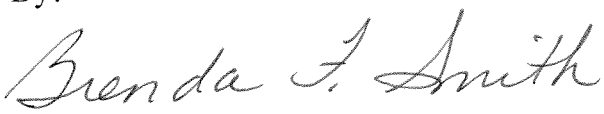
A sheriff that is removed from office by reason of a felony conviction forfeits his or her years of service credit as sheriff that predated his or her conviction.

A sheriff ending his or her tenure of office prior to 16 years of service as a law enforcement officer, 12 of which were served as sheriff, is entitled to repayment of funds withheld from his or her salary to participate in the sheriff's supernumerary program.

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:



BRENDA F. SMITH
Chief, Opinions Division

LS/BB
1776585/177988