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STATE OF ALABAMA
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Honorable Steven L. Reed
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Probate Judges – Fees – Probate Courts –
Population

The new fee schedule codified in section 12-19-90 of the Code of Alabama must be charged by all probate offices, except for Montgomery County, Madison County, Jefferson County, Mobile County, and Cullman County.

Dear Mr. Reed:

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

QUESTION

Is Montgomery County excluded from the increased fees in the fee schedule for probate offices in section 12-19-90 of the Code of Alabama in light of section 11-2A-2(6) of the Code?

FACTS AND ANALYSIS

You ask this Office to reconsider our opinion to Honorable Sheila G. Moore, Winston County Judge of Probate, dated September 21, 2007, A.G. No. 2007-138. That opinion stated that the new fee schedule codified in section 12-19-90 of the Code must be charged by all probate offices, except for Mobile County and Cullman County.

“Act 2000-108, known as the Omnibus Pay Raise Bill, [is] now codified at sections 11-2A-1 through 11-2A-8 of the Code of Alabama.” Opinion to Honorable Jay M. Ross, Attorney, Mobile County Commission, dated

September 21, 2006, A.G. No. 2006-149 at 1. The act “creates a new system for determining the annual compensation of various local officials based upon the population of the county.” *Moore* at 2. The act also “amended [section 12-19-90] by providing a new fee schedule that increased fees.” Opinion to Honorable Don Davis, Mobile County Probate Judge, dated December 26, 2007, A.G. No. 2008-023 at 2.

The *Moore* opinion was based on the following exception in section 12-19-90(d): “The increases provided in subsections (a) and (b) by Act 2000-108 shall not apply to counties in **Category 2** as defined in Section 11-2A-1 **or to Cullman County.**” ALA. CODE § 12-19-90(e) (2012) (emphasis added). Section 11-2A-1 establishes population categories for counties as follows:

- (1) **CATEGORY 1. Population in excess of 450,000.**
- (2) **CATEGORY 2. Population from 350,001 to 449,999.**
- (3) **CATEGORY 3. Population from 200,001 to 350,000.**
- (4) CATEGORY 4. Population from 50,001 to 200,000.
- (5) CATEGORY 5. Population from 19,000 to 50,000.
- (6) CATEGORY 6. Population of less than 19,000.

ALA. CODE § 11-2A-1(b) (2008) (emphasis added).

Therefore, the *Moore* opinion concluded that Mobile County was the only Category 2 county in the state, based on the 2000 census, applicable on the effective date of the act. The *Davis* opinion subsequently clarified that, because Mobile County was excepted from the increased fees, “the old fee[s] . . . remain[] applicable in Mobile County.” *Davis* at 2.

You correctly point out that the *Moore* opinion failed to address another exception in section 11-2A-2(6) found elsewhere in the act in the sections dealing with local official compensation and codified separately from the fee-schedule statute. ALA. CODE § 11-2A-2(6) (2008). This section, despite its location in the act, plainly states that “the increases in fees under Section 12-19-90 provided for by Act 2000-108 shall not apply to any county in **Category 1 or 3** on June 1, 2000.” *Id.* (emphasis added). The 2000 census lists the

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population of Montgomery County as 223,510 and Madison County as 276,700, making those counties the only ones with population estimates between 200,001 to 350,000. Moreover, Jefferson County is listed as having a population of 662,047, making it the only county with a population estimate in excess of 450,000.

Accordingly, for purposes of the new fees in the act, in addition to the classification of Mobile County as a Category 2 county, Montgomery County and Madison County are classified as Category 3 counties, and Jefferson County is classified as a Category 1 county. The *Moore* opinion is overruled to the extent that it conflicts with this opinion.

CONCLUSION

The new fee schedule codified in section 12-19-90 of the Code must be charged by all probate offices, except for Montgomery County, Madison County, Jefferson County, Mobile County, and Cullman County.

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

LS/GWB

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