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Honorable Mark Wilson
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Health, County Boards of – Retirement
Benefits – Local Laws

Act 2008-406 requires the Jefferson County Department of Health to pay the retirees, pensioners, and his or her beneficiaries the one-time, lump-sum payment provided for in Act 2014-429.

Act 2008-406 renders the optional resolution provided for in Act 2014-429 unnecessary.

Act 2008-406 requires the Jefferson County Department of Health to fund and pay the one-time, lump-sum payment described in Act 2014-429 to all retirees and pensioners of the Jefferson County Department of Health, regardless of whether the date of his or her retirement was before or after the election to participate in the Employees' Retirement System.

Dear Dr. Wilson:

This opinion of the Attorney General is issued in response to your request on behalf of the Jefferson County Department of Health ("JCDH").

QUESTIONS

(1) Do the provisions of Act 2008-406 apply to the one-time, lump-sum payment under Act 2014-429 such that the Jefferson County Health Department is required to pay the retirees of the JCHD the amounts called for under Act 2014-429?

(2) If so, is the JCHD required to pass a resolution as called for in Act 2014-429?

(3) Is the JCDH required to fund the one-time, lump-sum payment described in Act 2014-429 to those persons who retired before and after the JCHD made the election to join the Employees' Retirement System?

FACTS AND ANALYSIS

According to your request, JCHD participates in the Employees' Retirement System ("ERS") pursuant to the previous election of the JCDH to participate in ERS under the provisions of section 36-27-6 of the Code of Alabama.

A question has arisen as to what effect, if any, that Act 2014-429 has upon Act 2008-406. Act 2014-429, a general statute applying to the entire state, which became effective on April 10, 2014, provides for a one-time, lump-sum addition to the retirement benefits of certain retirees and beneficiaries of the ERS. 2014 Ala. Acts No. 2014-429. Pursuant to section 2 of Act 2014-429, employers who elected, pursuant to the provisions of section 36-27-6 of the Code, to participate in the ERS may elect to come under the provisions of Act 2014-429 by official resolution duly adopted on or before August 31, 2014. *Id.* at § 2.

Act 2008-406, which became effective on May 16, 2008, is a local act specifically applicable to the JCDH. 2008 Ala. Acts. No. 2008-406, 800. This act states that "[w]henver the retired employees of the state are granted a cost-of-living adjustment (COLA) or other monetary increase by the Legislature, the retired employees and beneficiaries and pensioners and beneficiaries of the Jefferson County Department of Health shall be granted such COLA or other monetary increase." *Id.*

Essentially, you are asking whether a resolution of the JCDH is necessary to ensure the eligibility of the retirees of the JCDH to the lump-sum payment authorized by Act 2014-429 or if eligibility is mandated by the provisions of Act 2008-406. The answer to this question necessarily depends on whether Act 2014-429 amends or repeals Act 2008-406.

Act 2014-429 contains no repealer clause nor does it specifically reference Act 2008-406. 2014 Ala. Acts No. 2014-429. Additionally, there is no indication that the Legislature intended to impliedly repeal or amend Act 2008-406 by the passage of Act 2014-429.

Moreover, as this Office has previously observed:

[A] general law dealing with a specific subject is not to be construed as repealing a local law dealing with the same subject. In the absence of express language indicating an intention to repeal, it is possible for one act to repeal another by implication, but the threshold for such repeal is high. To determine whether a statute impliedly repeals another, the intent of the enacting legislation must be determined. In *Day v. Morgan County Comm'n*, the Alabama Supreme Court held that there must be a plain indication of the Legislature's intent that the general act shall repeal the special act, either express or implied. Another Alabama Supreme Court case suggests that ***there must be irreconcilability between the acts to declare that one act impliedly repeals the other.***

Opinion to Honorable William E. Shinn, Jr., Attorney, Morgan County Commission, dated July 14, 2004, A.G. No. 2004-177 (internal quotations and citations omitted) (emphasis added).

We have reviewed both Act 2014-429 and Act 2008-406 and do not find them to be irreconcilable. The purpose of Act 2014-429 is to provide a one-time, lump-sum addition to the retirement benefits of certain retirees and beneficiaries of ERS. Section 2 of Act 2014-429 merely provides an optional mechanism for all local agencies that had previously opted into the ERS to elect, by resolution, to offer the same benefit to his or her respective retirees. Act 2008-406 specifically addresses such benefits for retirees of JCDH. Specific provisions relating to specific subjects control general provisions relating to general subjects. *Ex parte Jones Mfg. Co. Inc.*, 589 Sol 2d 208, 211

(Ala. 1991). Furthermore, there is a reasonable field of operation for each act. Act 2008-406 governs the lump sum provided for in Act 2014-429 as applied to retirees of JCDH. Section 2 of Act 2014-429 governs the application of the lump sum to local agencies that do not have a local act requiring such increases, but gives the local agencies the option to provide the increase to its retirees.

Act 2008-406 guarantees the benefit of all “monetary increase[s] by the Legislature” on behalf of employees of the JCDH without the requirement of a resolution. Should the JCDH elect, by resolution, to proceed under Act 2014-429, its retirees would enjoy the benefits thereunder. Should the JCDH make no election to proceed under Act 2014-429, the retirees would still be entitled to the benefits of Act 2014-429 pursuant to Act 2008-406. Thus, there is no conflict.

With respect to your final question, Act 2008-406 grants all cost-of-living adjustments or other monetary increases by the Legislature to “the retired employees and beneficiaries and pensioners and beneficiaries of the Jefferson County Department of Health” 2008 Ala. Acts No. 2008-406, 800. “The cost of COLA or other monetary increase shall be funded out of any and all funds appropriated to the Jefferson County Department of Health.” *Id.*

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). Act 2008-406 guarantees the “monetary increases” to all retirees, pensioners, and their beneficiaries, regardless of whether his or her date of the retirement was before or after the JCDH elected to participate in the ERS. Also, Act 2008-406 requires the benefit to be paid from the “funds appropriated to the Jefferson County Department of Health.” 2008 Ala. Acts No. 2008-406, 800.

CONCLUSION

Act 2008-406 requires the Jefferson County Department of Health to pay the retirees, pensioners, and their beneficiaries the one-time, lump-sum payment provided for in Act 2014-429.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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