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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

November 6, 2014

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

Honorable Michael W. Armistead
Probate Judge and Chairman
Choctaw County Commission
117 South Mulberry Avenue, Suite 9
Butler, Alabama 36904

Omnibus Pay Raise Act – County
Commissioners – Compensation – Local
Laws – Choctaw County

Choctaw County Commissioners should be compensated at the rate established under the Omnibus Pay Raise Act because the recent local act did not increase the compensation to be received by the Choctaw County Commissioners.

In future years, in the event percentage increases are awarded across the board to county employees, members of the Choctaw County Commission would be entitled to these benefits as set out in the Omnibus Pay Raise Act.

Dear Mr. Armistead:

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

QUESTION

(1) Shall the minimal pay for our part-time county commissioners be set at the rate established under the Omnibus Pay Raise Act, or is their pay limited to \$20,000 as set out in our local Act 2014-187?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that Act 2014-187, which is a local act only applicable to Choctaw County, set the salary of the Choctaw County Commissioners at \$20,000 annually. You now seek guidance regarding whether two new county commissioners who will take office in November should be paid pursuant to the provisions set forth in state law or the provisions set forth in the local act.

County commissioners are entitled to receive the minimum compensation prescribed by the Omnibus Pay Raise Act, set out in sections 11-2A-2(2) and 11-3-4.1 of the Code of Alabama, as well as any additional across-the-board salary increases authorized to be given to all county employees, unless the county opted out of the provisions of the Omnibus Pay Raise Act prior to October 1, 2000. ALA. CODE §§ 11-2A-2(2), 11-2A-2(7), 11-2A-4 & 11-3-4.1 (2008).

You have advised this Office that the Choctaw County Commission has consistently followed the provisions of the Omnibus Pay Raise Act and did not opt out. Because the Choctaw County Commissioners have been entitled to and have received several salary increases since the implementation of the Omnibus Pay Raise Act, it has come to your attention that the compensation of \$20,000 set forth by local act is less than the compensation amount that the commissioners would be authorized to receive pursuant to the Omnibus Pay Raise Act ("Omnibus").

Section 11-2A-4 of the Code discusses the manner in which compensation increases received under Omnibus are to be handled. Section 11-2A-4(b) acknowledges the authority of the Legislature to increase the compensation of elected officials pursuant to local law. This provision, however, states that increases given pursuant to local act will halt future Omnibus increases until such time as the total compensation that would have been received under Omnibus equals or exceeds the increase provided by the local law. ALA. CODE § 11-2A-4 (2008).

There is no express or implied authority in the Omnibus Pay Raise Act that authorizes the compensation of these elected officials to be reduced or decreased by the passage of a local act. Because the Omnibus Pay Raise Act specifically provides for salary increases and is silent with respect to salary decreases, salaries may not be decreased by a local act. *See* opinion to Honorable William M. Harper, Elmore County Revenue Commissioner, dated December 30, 2003, A.G. No. 2004-050 (citing case law for authority that a

local act cannot alter the requirements of the Omnibus Pay Raise Act, a general law).

Because the local act would compensate the commissioners at an amount lower than the amount the commissioners are due to receive pursuant to state law, it is the opinion of this Office that the county commissioners are to be paid the compensation set by the Omnibus Pay Raise Act. Thus, any Choctaw County Commissioner whose term of office commenced on or after November 1, 2014, is entitled to receive compensation pursuant to state law provisions under the Omnibus Pay Raise Act. Such compensation would include the base pay authorized as a result of Omnibus and any additional increases previously awarded.

CONCLUSION

Choctaw County Commissioners should be compensated at the rate established under the Omnibus Pay Raise Act because the recent local act did not increase the compensation to be received by the Choctaw County Commissioners.

QUESTION

(2) In future years, in the event percentage increases are awarded across the board to county employees, will county commissioners be entitled to these benefits as set out in the Omnibus Pay Raise Act?

FACTS AND ANALYSIS

Next you question whether, in future years, county commissioners would be entitled to percentage increases if percentage increases are given across the board to county employees. Section 11-2A-4 of the Code authorizes certain elected officials to obtain the same uniform increases given to county employees if such increases are approved at the time the budget is approved. ALA. CODE § 11-2A-4 (2008). As noted earlier, because the provisions of Act 2014-187 provided the commissioners with a salary that was lower than what would be provided pursuant to Omnibus, any Choctaw County Commissioners taking office on or after November 1, 2014, are entitled to all future salary increases that comport with the requirements set out in the Omnibus Pay Raise Act.

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CONCLUSION

In future years, in the event percentage increases are awarded across the board to county employees, members of the Choctaw County Commission would be entitled to these benefits as set out in the Omnibus Pay Raise Act.

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