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STATE OF ALABAMA
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County Commissioners – Expense
Allowance – Reimbursement – Mileage

A member of the Choctaw County Commission is entitled to reimbursement for actual travel expenses, including mileage while traveling in his or her personal vehicle within or outside the county and performing the duties of a county commissioner.

Dear Mr. McPhearson:

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

QUESTION

Is a member of the Choctaw County Commission entitled to reimbursement for actual travel expenses, including mileage, while traveling in his or her personal vehicle within or outside the county and performing the duties of a county commissioner?

FACTS AND ANALYSIS

Section 11-3-4 of the Code of Alabama states as follows:

Each member of the county commission . . . shall be entitled to reimbursement of all . . . mileage at the rate allowed by the Internal Revenue Code for income

tax deduction while traveling in his or her personal vehicle within or outside of the county, in performing the duties of the office of county commissioner.

....

This section shall not operate to repeal or amend any local law affecting any county with respect to the matters contained in this section.

ALA. CODE § 11-3-4 (2008). Under the plain language of this section, a county commissioner is entitled to reimbursement for actual travel expenses and mileage unless a preexisting local act applicable to Choctaw County provides differently. This Office is unaware of any such preexisting statute.

Subsequent, however, to the enactment of section 11-3-4 of the Code, the Legislature adopted Act 2014-187 as a local act applicable only to Choctaw County. 2014 Ala. Acts. No. 2014-187, Sec. 1. Pursuant to Act 2014-187, each part-time member of the county commission is to receive a salary of \$20,000 annually. *Id.* at sec. 2. The act further provides that “[t]he members of the commission shall not receive an expense allowance or other benefit for serving on a part-time basis except as expressly provided in this act.” *Id.*

At the outset, it should be noted that exceptions to a statute should be construed strictly. *In re Anonymous*, 812 So. 2d 1218, 1220 (Ala. Civ. App. 2001). Thus, the effect, if any, of Act 2014-187 to operate as an exception to section 11-3-4 of the Code is subject to a narrow interpretation.

Act 2014-187 does not define the terms “expense allowance” or “benefit.” Additionally, the act does not specifically prohibit reimbursement of actual expenses or mileage. Indeed, the act permits, but does not require, a county commissioner to utilize a county vehicle for the performance of official duties. *Id.* at sec. 6. Thus, it is unclear if the Legislature intended to prohibit members of the Choctaw County Commission from being reimbursed for actual travel expenses and mileage incurred through official duties.

The fundamental rule of construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep’t of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). If there is uncertainty about legislative intent in the enactment of a statute, courts may look to the preamble of the act to determine legislative intent. Opinion to Honorable James K. Lyons, Director, Alabama State Port Authority, dated December 7, 2012, A.G. No. 2013-015.

The preamble to Act 2014-187 states that one of its purposes is to “provide for the compensation of the commission.” 2014 Ala. Acts. No. 2014-187, preamble. An “expense allowance” is included in the definition of compensation. ALA. CODE § 11-3-4.1 (2008). Reimbursement for mileage traveled and other actual and necessary expenses, on the other hand, are specifically excluded from the definition of compensation. *Id.* Therefore, it is the opinion of this Office that the Legislature did not intend, in enacting Act 2014-187, to prohibit members of the Choctaw County Commission from being reimbursed for actual travel expenses and mileage.

CONCLUSION

A member of the Choctaw County Commission is entitled to reimbursement for actual travel expenses, including mileage, while traveling in his or her personal vehicle within or outside the county and performing the duties of a county commissioner.

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:



BRENDA F. SMITH
Chief, Opinions Division