

86-00045

OFFICE OF THE ATTORNEY GENERAL



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Honorable Ed Turner
Tax Assessor, Fayette County
Fayette County Courthouse
Fayette, AL 35555

Compensation - Tax Assessors

Under Act 82-620, fee official
who is converted to salary is
protected against reduction in
income.

Dear Mr. Turner:

Your request for an opinion is in pertinent part as follows:

Honorable A. A. Nichols, the duly elected, qualified, and acting Tax Assessor in and for Fayette County, Alabama, resigned that office on September 30, 1984. He collected in fees, for the tax year 1983-1984, the sum of \$28,690.32. Having received the Democratic Party nomination for this office on September 25, 1984, I was appointed by the Governor to fill the unexpired term of Mr. Nichols, which term ended on September 30, 1985. Having been elected at the general election on November 6, 1984, I entered upon my term of office on October 1, 1985.

Pursuant to Section 40-6A-2, the Fayette County Commission on September 23, 1985, adopted a resolution placing the tax assessor and tax collector of Fayette County on salary. As stated above, the fee of the previous incumbent, Mr. Nichols, for the tax year 1984 was \$28,690.32. Under the provisions of Section 40-6A-4, Mr. Nichols would

have been entitled to a salary equal to his net personal income for 1984 of \$28,690.32. Since I was appointed to complete his term from October 1, 1984, to September 30, 1985, am I entitled to a salary based upon Mr. Nichol's income for the tax year 1984, the tax year preceding the change to salary, or will I receive the salary set by Section 48-6A-2, as last amended, in the sum of \$25,000.00?

Act 82-620 (now codified as Section 40-6A-1, et seq., Code of Alabama 1975), which was passed pursuant to Amendment No. 411, Constitution of Alabama of 1901, establishes minimum salaries for local taxing officials in the various counties of this State. Section 2 of the Act provides that on and after the effective date of the Act, and upon approval by the county governing body of a resolution of authorization, the tax assessors, etc., shall be compensated by an annual salary. The salary provided for taxing officials in the counties the size of Fayette County, as provided by Act 85-791, is now \$25,000. Section 4 of Act 82-620 provides:

All officials who are being converted from a fee basis to a salary basis by this Act, whose net personal income from fees, commissions, allowances or other compensation for the tax year next preceding the effective date of this Act are higher than the salaries specified in the foregoing schedule, shall be placed on a salary equal to their net personal income for such year. Such salary for said officials being converted from a fee basis to a salary basis shall continue, subject to the other provisions of this Act, for as long as said officials continuously remain in office, and upon vacation of their office for whatever cause the salary of their successor shall be determined according to the schedule set forth in Section 2 hereof, unless otherwise provided by the passage of local legislation affecting any such counties.

This office held in an opinion to Honorable Charlie Deer, Tax Collector, Monroe County, dated November 28, 1984, that the salary of taxing officials converted from a fee basis to a salary basis under Act 82-620 is to be based on the tax year next preceding the date of adoption of the resolution of authorization in the particular county. The apparent intent of Act 82-620 is that the higher salary based on fees is personal to the tax assessor in office when the fees were earned. The Act specifically provides that upon vacation of the office, the salary of the successor shall be determined according to the schedule set

forth in the Act. Even though you are the taxing official who was in office at the time that the Act became effective in your county, you yourself earned no fees and commissions in the tax year next preceding the effective date of the Act. Such fees were earned and received by your predecessor in office, although during the year in which the Act became effective, you were on the fee system. This situation obviously was not contemplated by the Legislature when it enacted Act 82-620. However, since the Act provides protection from a reduction in income for fee officials who are converted to a salary basis of compensation, and since you were on the fee system and were converted to a salary, it is the opinion of this office that the protections contained in the Act should apply to you. Therefore, your salary should be based on the fees earned by your predecessor in office during the tax year next preceding the effective date of the Act in your county. This result would appear to accomplish the intent of the Act.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



RON BOWDEN
Assistant Attorney General

CAG/RB:ccc