



2004 - 189

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

July 27, 2004

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Honorable Priscilla Dunn  
Member, House of Representatives  
Post Office Box 365  
Bessemer, Alabama 35021

BEFORE CITING THIS OPINION, SEE ACT 2004-380, WHICH STATES THAT APPOINTED CHIEF DEPUTIES MAY RECEIVE SAME BENEFITS AS OTHER COUNTY EMPLOYEES, INCLUDING COST-OF-LIVING PAY RAISES, BUT TOTAL COMPENSATION OF CHIEF DEPUTIES SHALL NOT EXCEED 90 PERCENT OF COMPENSATION OF APPOINTING OFFICIAL.

Omnibus Pay Raise Bill - Chief Deputy  
Tax Assessors - Chief Deputy Tax  
Collectors - Compensation - Jefferson  
County

The appointed Jefferson County chief deputy tax assessors for the Birmingham and Bessemer divisions and the appointed Jefferson County chief deputy tax collectors for the Birmingham and Bessemer divisions are not entitled to receive 90 percent of the total current compensation of the appointing Jefferson County tax officials.

The cost-of-living increase provision in the Omnibus Pay Raise Bill applies only to the named county officials.

The automobile expense allowance created by Act 95-735, as amended by Act 99-354, applies only to the named county officials.

The chief deputies are due a cost-of-living increase because they are entitled to the same benefits as county merit system employees. When the Jefferson County Commission grants a cost-of-living increase to merit system employees, the chief deputies should receive the same cost-of-living increase.

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Dear Representative Dunn:

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

#### QUESTIONS

Is each chief deputy tax assessor and each chief deputy tax collector of the Birmingham and Bessemer divisions entitled to receive, as part of his or her annual compensation, 90 percent of both the 3 percent cost-of-living increase and the automobile expense allowance given to the appointing officials?

What is the total compensation from all sources that is to be paid to each chief deputy tax assessor and each chief deputy tax collector?

#### FACTS AND ANALYSIS

In Jefferson County, the chief deputy tax collectors and chief deputy tax assessors are appointed by the elected Jefferson County tax officials. Act 96-541 states as follows:

The appointed chief deputy tax assessor and the appointed chief deputy tax collector, and the chief deputy tax assessor, Bessemer Division, and the chief deputy tax collector, Bessemer Division, shall receive an annual salary equal to Jefferson County merit system class 30, but *in no event shall such salary exceed 90 percent of the annual salary received by the appointing official.*

1996 Ala. Acts No. 96-541, 757 (emphasis added). Although Act 96-541 states that the appointed chief deputies' annual salaries may be as much as 90 percent of the annual salary of the appointing officials, it should not be construed to mean that the appointed chief deputies are *entitled* to 90 percent of the salary of the appointing officials, nor should it be interpreted as entitling the chief deputies to 90 percent of the total compensation of the appointing officials. The current salaries of the chief deputies are set by Acts 99-647 and 2000-359 and

are already equal to 90 percent of the annual salaries of the respective appointing officials.

Act 99-647 sets the current salary for the elected Jefferson County tax assessor, the elected assistant tax assessor for the Bessemer division, and the appointed chief deputy tax assessors for the Birmingham and Bessemer divisions. This act provides that the chief deputy tax assessor for the Birmingham division will receive an additional expense allowance in the amount of \$11,020 per annum, and the chief deputy tax assessor for the Bessemer division will receive an additional expense allowance in the amount of \$9,720 per annum. These compensation increases must be in the form of an expense allowance rather than a salary increase because of the prohibition against salary increases during a local official's term of office contained in section 68 of the Alabama Constitution. The expense allowance then converts to salary following the beginning of the local official's next term of office. After the expense allowance has been converted to salary, the total annual salary for the chief deputy tax assessor for the Birmingham division will be \$66,420, and the total annual salary for the chief deputy tax assessor for the Bessemer division will be \$59,778. These salaries are equal to 90 percent of the salaries of the respective appointing elected officials.

Act 2000-359 sets the current salary for the elected Jefferson County tax collector, the elected assistant tax collector for the Bessemer division, and appointed chief deputy tax collectors for the Birmingham and Bessemer divisions. This act provides that the chief deputy tax collector for the Birmingham division will receive an additional expense allowance in the amount of \$11,020 per annum, and the chief deputy tax collector for the Bessemer division will receive an additional expense allowance in the amount of \$9,720. After the expense allowance has been converted to salary, the total annual salary for the chief deputy tax collector for the Birmingham division will be \$66,420, and the total annual salary for the chief deputy tax collector for the Bessemer division, will be \$59,778. These salaries are equal to 90 percent of the salaries of the respective appointing elected officials.

Your request asks whether the appointed chief deputies are entitled to 90 percent of the total annual compensation currently being received by the appointing officials. This would include 90 percent of the regular salary and expense allowances of the appointing officials as set in Acts 99-647 and 2000-359, as well as 90 percent of both a 3 percent cost-of-living increase under the Omnibus Pay Raise Bill and an automobile expense allowance.

The Omnibus Pay Raise Bill, Act No. 2000-108 (codified as section 11-2A-1, *et seq.*, of the Code of Alabama), includes a provision for local officials

covered by the act to receive the same uniform compensation increases as those granted to county employees by the county commission. When Act 2000-108 was originally passed, Jefferson County was expressly excluded from the provisions. When Act 2000-108 was amended by Act 2001-697 and the amendment was incorporated into the Code of Alabama by Act 2002-403, the paragraph expressly excluding Jefferson County was deleted, thereby repealing the exclusion of Jefferson County from the Omnibus Pay Raise Bill. The Alabama Supreme Court has held that the wording of the law as codified in the Code of Alabama becomes the law, and the Legislature's original wording ceases to be the law. *See Densmore v. Jefferson County*, 813 So. 2d 844 (2001).

Section 11-2A-1 specifically names the local officials who shall receive the additional compensation. This section names the tax assessor, tax collector, elected assistant tax assessor, and elected assistant tax collector. ALA. CODE § 11-2A-1 (2003). Therefore, the law applies in Jefferson County only to the following officials: the Jefferson County tax assessor, the Jefferson County tax collector, the elected assistant tax assessor for the Bessemer division, and the elected assistant tax collector for the Bessemer division. The cost-of-living increase provided in section 11-2A-4 does not apply to the chief deputies.

Act 95-735, as amended by Act 99-354, provides for certain county officials to have either an automobile furnished by Jefferson County for official duties or an automobile expense allowance. The act lists the specific county officials to whom the act is applicable, naming the Jefferson County commissioner, the Jefferson County tax assessor, the Jefferson County tax collector, the assistant Jefferson County tax assessor for the Bessemer division, the Jefferson County treasurer for the Birmingham division, and the Jefferson County treasurer for the Bessemer division. The assistant Jefferson County tax collector for the Bessemer division is not included as one of the county officials who receives the automobile allowance. It is the opinion of this Office that the Legislature intended for this act to apply only to the named officials. It is particularly obvious that the act should not apply to the appointed chief deputies because the assistant tax assessor for the Bessemer division was not included among the named officials. It would be inappropriate to give the automobile allowance to the appointed chief deputies, under the theory that they are entitled to 90 percent of the total compensation of the appointing officials, when one of the appointing officials is not receiving the automobile allowance.

Although the chief deputies are not entitled to a cost-of-living increase under the Omnibus Pay Raise Bill, they are otherwise due a cost-of-living increase. This is because the chief deputies are entitled to the same benefits given to Jefferson County merit system employees. Act 87-421 grants the same benefits as merit system employees to the chief deputy tax assessors of the

Birmingham and Bessemer divisions of Jefferson County. Act 88-936 grants these benefits to the chief deputy tax collector of the Birmingham division, and Act 88-946 grants these benefits to the chief deputy tax collector of the Bessemer division.

The acts state that the "Chief Deputy shall receive any and all benefits that are received by Merit System Employees, including longevity payments . . ." 1997 Ala. Acts No. 87-421, 621; 1988 Ala. Acts No. 88-936, 550; 1988 Ala. Acts No. 88-946, 567. It is the opinion of this Office that cost-of-living increases qualify as such a benefit. Therefore, if the Jefferson County Commission grants merit system employees in Jefferson County a cost-of-living increase, the chief deputies would be entitled to the same cost-of-living increase. This cost-of-living increase will not be subject to a limitation of 90 percent of the cost-of-living increase received by the appointing authorities. The only limitation placed on the compensation of the chief deputies is that their salary should not "exceed 90 percent of the annual salary received by the appointing official." 1996 Ala. Acts No. 96-541, 757.

The total compensation to be paid to the chief deputies is the specific salary and expense allowance as set out in Acts 99-647 and 2000-359, plus any other benefits they are due as merit system employees, including cost-of-living increases granted by the Jefferson County Commission.

#### CONCLUSION

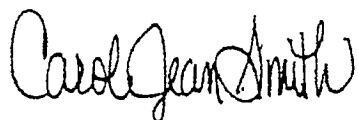
The appointed Jefferson County chief deputy tax assessors for the Birmingham and Bessemer divisions and the appointed Jefferson County chief deputy tax collectors for the Birmingham and Bessemer divisions are not entitled to 90 percent of the total current compensation of the appointing Jefferson County tax officials. The cost-of-living increase provision in the Omnibus Pay Raise Bill applies only to the named county officials. The automobile expense allowance created by Act 95-735, as amended by Act 99-354, applies only to the named county officials. The chief deputies are entitled to a cost-of-living increase, however, because Acts 87-421, 88-936 and 88-946 state that the chief deputies are entitled to all of the benefits of county merit system employees. When the Jefferson County Commission grants a cost-of-living increase to merit system employees, the chief deputies should receive the same cost-of-living increase.

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

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive, flowing style.

CAROL JEAN SMITH  
Chief, Opinions Division

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