



2004 - 207

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

August 24, 2004

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Bill English
Lee County Probate Judge
Post Office Box 666
Opelika, Alabama 36803-0666

Honorable Oline Price
Lee County Revenue Commissioner
Post Office Box 2413
Opelika, Alabama 36803-2413

Probate Judges -- Tax Collectors --
Discretionary Funds -- Compensation -- Lee
County

The chairman of the county commission does not have any obligation under section 11-12-10 of the Code of Alabama to determine whether the expenditure of funds from the Expendable Trust Fund and the Manufactured Homes Account is authorized by law.

Section 68 of the Alabama Constitution prohibits elected officials from giving seasonal lump-sum bonuses to employees from discretionary funds by referring to them as "salary supplements" unless there was an expectation or agreement for the additional salary.

The chairman of the county commission may properly refuse to sign a check for any claims made by authorized officials to the Expendable Trust Fund or Manufactured Homes Account that are illegal or unconstitutional.

Honorable Bill English
Honorable Oline Price
Page 2

Dear Judge English and Ms. Price:

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

QUESTION ONE

Does the chairman of the county commission have any obligation under section 11-12-10 of the Code of Alabama to determine whether the expenditure of public funds for payment of claims from the Expendable Trust Fund and the Manufactured Homes Citation Issuance Fee Account is authorized by law?

FACTS AND ANALYSIS

In November 2000, the voters of Lee County ratified the formation of a new position, revenue commissioner, which combined the offices of tax collector and tax assessor. Ms. Janice Golden, Lee County's former tax collector, was an unsuccessful candidate for this position in November 2002.

Before leaving office, Ms. Golden filed claims for "salary supplements" to be paid out of the "Expendable Trust" fund and Manufactured Homes Citation Issuance Fee Account to some, but not all, of the employees of the tax collector's office. There is some indication that the "salary supplements" were given only to those employees who supported the former tax collector's failed bid to become elected Revenue Commissioner of Lee County. The claims essentially drain all of the money from these discretionary accounts leaving nothing for the incoming Revenue Commissioner. The question, therefore, arises as to whether these payments constitute valid expenditures of public funds, and whether you, as chairman of the county commission, have a responsibility to make such a determination.

Section 11-12-10 of the Code of Alabama provides, in pertinent part, as follows:

It shall be the duty of the chairman of the county commission or such other officer . . . to inspect and review each claim presented for payment from the public funds of the county, irrespective of whether such

claim has previously been audited and allowed by the county commission, and such officer shall examine and determine independently with reference to each of such claims whether or not the expenditure of public money of the county in payment of such claim is authorized by law and whether or not public funds of the county may be expended for the purpose or purposes shown in such claim; provided that *the provisions of this section . . . shall not apply to those claims by law excepted from the requirement of audit and allowance by the governing body of the county.*

ALA. CODE § 11-12-10 (1989) (emphasis added). As the chairman of the county commission, you would be responsible for such inspection and review of claims made to public funds, provided that the claim is not excepted from the requirement of audit.

As stated above, the claims in question were filed by Janice Golden for salary supplements to be paid from two discretionary fund accounts. One account, the "Expendable Trust Fund," was created by Act 89-913 (codified as sections 40-1-47 and 40-1-48 of the Code of Alabama). The Expendable Trust Fund contains ten percent of the interest earned on the investment of ad valorem taxes. The other account, the "Manufactured Homes Account," was created by section 40-12-255 of the Code and contains a portion of the fees collected from manufactured home registrations.

Section 40-1-47 designates control over the Expendable Trust funds to the tax assessor, tax collector, revenue commissioner, license commissioner, or any other official charged with collecting ad valorem taxes. Section 40-1-48 outlines the permitted uses of the special funds. There is no specific requirement in either sections 40-1-47 or 40-1-48 that the money in the Expendable Trust Fund is subject to any audit and allowance of claims. The statute does not contemplate that the county governing body has any authority over claims made to the Expendable Trust Fund. In the absence of any statutory direction to the contrary, it is the opinion of this Office that the recipients of the funds may use their own discretion in authorizing expenditures from their respective funds. This conclusion is consistent with a previous opinion from this Office issued to Honorable John T. Scott, Assistant Tax Assessor, Jefferson County, dated August 25, 1989, A.G. No. 89-00403.

Section 40-12-255(a) grants discretionary power over the Manufactured Homes Account to officials or designated representatives who issue the manufactured home registrations. This section states, in part, as follows:

The official collecting such registration fees and issuing such identification decals in evidence of payment thereof shall also collect a \$5 issuance fee to be distributed as follows: \$4 to the county general fund if the issuing official is on salary and if the issuing official is on the fee system, then the \$4 issuance fee shall go to the issuing official, and the remaining *\$1 shall accrue to an account in the office of the county treasurer for use by the issuing official or designated representative, and such accumulated moneys shall be used only for performance of his or her official duties.*

ALA. CODE § 40-12-255(a) (2003) (emphasis added). Again, there is no statutory language to suggest that use of the funds is subject to the approval of the county governing body. It is, therefore, the opinion of this Office that the issuing official or his or her designated representative has sole discretion in the expenditure of the Manufactured Homes Account funds.

CONCLUSION

The chairman of the county commission does not have any obligation under section 11-12-10 of the Code of Alabama to determine whether the expenditure of funds from the Expendable Trust Fund and the Manufactured Homes Account is authorized by law.

QUESTION TWO

May elected officials give seasonal lump-sum bonuses to employees from discretionary funds by referring to them as "salary supplements"?

FACTS AND ANALYSIS

Section 68 of the Constitution of Alabama prohibits the payment of extra compensation after services have been rendered. Section 68 of the Constitution states as follows:

The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, *after service shall have been rendered or contract made*, nor to increase or decrease the fees and compensation of such officers during their terms of office. . . .

ALA. CONST. art IV, § 68. This provision prohibits elected officials from giving seasonal lump-sum bonuses to employees from discretionary funds by referring to them as “salary supplements.” This Office has previously opined that a board of education is prohibited from paying a school principal additional salary for services rendered in the past where there was no expectation or agreement for additional salary. Opinions to Honorable Robert H. Harris, Attorney, Morgan County Board of Education, dated March 5, 2001, A.G. No. 2001-108; to Honorable Donald B. Sweeney Jr., Attorney, Lawrence County Board of Education, dated December 2, 1998, A.G. No. 99-00051; and to Honorable Ben Payton, Acting Director, Jefferson County Personnel Board, dated February 3, 1988, A.G. No. 88-00136.

Even though the officials who have authority over the money in the Expendable Trust Fund and the Manufactured Homes Account have a great deal of discretion regarding the use of the money, such use cannot exceed the limitations placed on this discretion by the Alabama Constitution. There is no indication in the facts you submitted that there was any expectation or agreement for the “salary supplements.” Any use of the funds in this manner would, therefore, violate section 68 of the Alabama Constitution.

CONCLUSION

Section 68 of the Alabama Constitution prohibits elected officials from giving seasonal lump-sum bonuses to employees from discretionary funds by

referring to them as "salary supplements" unless there was an expectation or agreement for the additional salary.

QUESTION 3

Should the chairman of the county commission sign a check for any claim presented by officials with authority over such discretionary funds?

FACTS AND ANALYSIS

As you set forth in the information provided to this Office, the chairman of the county commission in Lee County has signature authority on the checking accounts for the Expendable Trust Fund and the Manufactured Homes Account and the tax collector does not. This arrangement was made following the advice of the state audit manager. This signature authority does not include the authority to monitor the appropriateness of the use of the accounts. As discussed in response to Question 1, sections 40-1-47, 40-1-48, and 40-12-255 of the Code of Alabama allow the expenditure of funds from these accounts without the approval of the county governing body. The signature necessary in Lee County for the issuance of checks does not serve as an approval, but rather a formality in the claims process.

Because the chairman of the county commission does not have any obligation to evaluate the propriety of claims made to the accounts, he or she must sign a check for any claim made by an official with authority over the funds in the accounts. If the chairman, however, is knowledgeable of facts that make the payment illegal or unconstitutional, he or she may properly refuse to sign the checks. In the fact situation you describe, the proposed payments to the individuals would violate section 68 of the Alabama Constitution and, therefore, you, as commission chairman, may properly refuse to sign the checks.

CONCLUSION

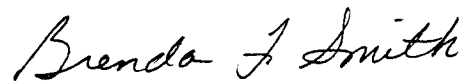
The chairman of the county commission may properly refuse to sign a check for any claims made by authorized officials to the Expendable Trust Fund or Manufactured Homes Account that are illegal or unconstitutional. Because it is the opinion of this Office that the payments you describe would be improper and unconstitutional, the remaining questions you pose are moot.

Honorable Bill English
Honorable Oline Price
Page 7

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:



BRENDA F. SMITH
Chief, Opinions Division

TK/BHA
122412v2/58964, 59096