



2005 - 006

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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October 22, 2004

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Honorable Anthony B. Johnson
Bibb County Attorney
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Post Office Box 188
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Tax Assessors - Equalization,
Boards of - Expense Allowance -
Supernumerary Status

For the purpose of determining
supernumerary salary, the expense
allowance of the Tax Assessor of
Bibb County provided pursuant to
local acts should not be counted as
salary.

Dear Mr. Johnson:

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

QUESTION

Where the tax assessor/secretary of the
board of equalization receives a \$400 a month
expense allowance, where the 6 percent super-
numerary salary deduction is taken from said
allowance, and said expense was otherwise
treated as salary during the term it was paid,
should the monthly salary of such official as
supernumerary include 65 percent of the expense
allowance?

FACTS AND ANALYSIS

In your request, you state that the former Tax Assessor of Bibb
County also served as secretary of the county board of equalization. Pur-
suant to Act 867 of the 1978 Regular Session and Act 80-379 of the 1980

Regular Session, the secretary of the board of equalization was paid a \$400 per-month expense allowance. From this expense allowance, 6 percent was deducted and paid into a supernumerary tax assessor account. In addition, state and federal income tax deductions were taken from the \$400.

In a previous opinion from this Office issued to Honorable Lawrence M. Wettermark, Attorney, Mobile County Commission, dated April 12, 2002, A.G. No. 2002-210, this Office considered a similar request for Mobile County and concluded that the expense allowance paid to the Mobile County Revenue Commissioner should be considered as part of the average compensation for purposes of determining supernumerary salary. That opinion was based on an act passed in 2000 granting expense allowances to county officials, phasing them out at the beginning of the next term of office, and incorporating the allowance into salary.

This act, Act 2000-108, also expressly provided that “[d]eductions from the expense allowances provided under this Act shall be made for supernumerary programs . . . the same as if the expense allowance were salary.” 2000 Ala. Acts No. 2000-108, 148, 150. The previous opinion based on the 2000 act was decided upon the clear expression of the Legislature that the deductions should be made for the supernumerary program as if the expense allowance were salary. This language is not included in either of the acts providing the expense allowances in Bibb County referred to in your request. These are straight expense allowances with no additional expression of legislative intent.

In an opinion predating Act 2000-108 issued to Honorable Harold Radford, this Office stated that, under Act 85-979, an expense allowance for the Lawrence County Tax Assessor should not be included in the compensation upon which the supernumerary salary for that official should be based. Opinion to Honorable Harold Radford, Lawrence County Tax Assessor’s Office, dated April 8, 1987, A.G. No. 87-00148. The *Radford* opinion and the opinion cited in it are controlling in your circumstances, and the two expense allowances paid to the Bibb County Tax Assessor should not be included as compensation or salary upon which supernumerary salary should be based.

CONCLUSION

Where the Legislature has provided a county official with an expense payable out of county funds with no reference to retirement or supernumerary benefits, that expense allowance should not be considered

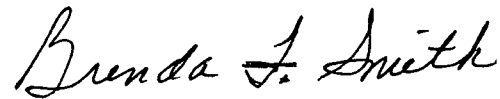
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a part of the official's salary upon which supernumerary benefits might be paid.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Walter S. Turner of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/WST/kh

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