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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Office of Profit – Board of
Registrars – Supernumerary Status –
Randolph County

A person is prohibited from serving
as both a supernumerary tax official
and a member of the board of
registrars because both positions are
offices of profit.

Dear Mr. Tinney:

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

QUESTIONS

1. Can a supernumerary tax official, who is receiving a check as a supernumerary tax official from the Randolph County Commission, also receive a check from the Randolph County Commission as a member of the Board of Registrars?
2. Is the office of Board of Registrars an office of profit?

FACTS AND ANALYSIS

Section 280 of the Constitution of Alabama prohibits a person from holding two offices of profit at the same time. ALA. CONST. art. XVII, § 280. A position or office is an "office of profit" if: (1) the office

holder exercises some part of the sovereign power of the State and (2) compensation is to be received for the performance of the duties of the office. *Opinion of the Justices*, 13 So. 2d 674 (Ala. 1943). This Office has previously stated that the "determining factor as to whether a position is an office of profit is whether the holder exercises some portion of the sovereign power of the state, and the holder must also be entitled to a fixed compensation for the position." *Opinion to Honorable Tracy L. Hawsey, Sheriff of Conecuh County*, dated September 5, 2003, A.G. No. 2003-235.

A tax collector, tax assessor, revenue commissioner, license commissioner, or other elected official charged with assessment and collection of ad valorem taxes may be commissioned as a supernumerary official pursuant to section 40-6-1 of the Code of Alabama. ALA. CODE § 40-6-1 (2003). A supernumerary tax official takes the oath of office prescribed for a tax official, automatically fills any vacancy in the office of tax official in that county, serves for life, and receives an annual salary as other county officials or employees. ALA. CODE §§ 40-6-2, 40-6-3 (2003).

This Office has stated that a supernumerary tax collector holds an office of profit. *Opinion to Honorable Harce Hill, Circuit Clerk, Lawrence County*, dated September 20, 2000, A.G. No. 2000-241. In addition, this Office has stated that a supernumerary revenue commissioner (a county tax official encompassing the duties of tax assessor and tax collector) holds an office of profit and may not hold another office of profit at the same time. *Opinion to Honorable Charles E. Howard, Revenue Commissioner, Morgan County*, dated April 29, 1992, A.G. No. 92-00264.

The board of registrars is responsible for accepting or rejecting voter registration applications. ALA. CODE § 17-4-122 (1995). Members of the board of registrars serve for a term of four years, and they receive a salary in the amount of \$60 per day. ALA. CODE §§ 17-4-151, 17-4-153(a) (1995 & Supp. 2004). Registrars are "judicial officers and shall act judicially in all matter pertaining to the registration of applicants." ALA. CODE § 17-4-154 (1995). Moreover, members of the board of registrars are considered "state officers." *Mitchell v. Wright*, 69 F.Supp. 698, 702 (D.C. Ala. 1947). Accordingly, members of the board of registrars exercise some part of the sovereign power of the State. In addition, this Office has previously stated that a member of the board of registrars holds an office of profit. *Opinion to Honorable William H. Olvey, Mayor, City*

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of Lipscomb, dated July 23, 1959. Therefore, a member of the board of registrars holds an office of profit. Accordingly, a person is prohibited from serving as both a supernumerary tax official and a member of the board of registrars because both positions are offices of profit.

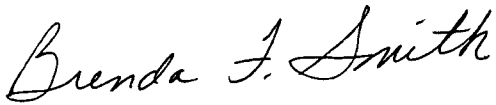
CONCLUSION

A person is prohibited from serving as both a supernumerary tax official and a member of the board of registrars because both positions are offices of profit.

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

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

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