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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Omnibus Pay Raise Bill - Supernumerary
Status - Sheriffs - Cost-of-Living Raises -
Expense Allowance - Compensation

A supernumerary sheriff is not entitled to any increase in his or her supernumerary pay if the current sheriff's increased pay is a result of the Omnibus Pay Raise Bill.

A supernumerary sheriff, before the Omnibus Pay Raise Bill, was entitled to an increase in his or her supernumerary pay as a cost-of-living allocation because the compensation or wages of the current sheriff increased.

A person entitled to make contributions to a supernumerary fund shall make those contributions based only on his or her salary, fees, and commissions. An expense allowance is not considered to be salary, fees, or compensation. Thus, where there is no legislation specifically entitling a person to make contributions to a supernumerary fund based on an expense allowance, a person is not entitled to contribute to the supernumerary fund based on the expense allowance.

The supernumerary sheriff is not entitled to an increase in his or her supernumerary pay as a result of an increase in the sheriff's expense allowance because an

expense allowance is not compensation or remuneration.

A county that enacts local legislation, i.e., outside of the Omnibus Pay Raise Bill, to increase the compensation of a sitting sheriff by having the expense allowance of the sheriff become part of the sheriff's salary at the beginning of the sheriff's next term, should give a cost-of-living increase to the supernumerary sheriff at the beginning of the sheriff's next term when the expense allowance becomes a part of the sheriff's salary.

Dear Mr. Faulk:

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

QUESTIONS

(1) Is the supernumerary sheriff entitled to increases in his or her supernumerary pay based on any increases in the current sheriff's pay or only to official "cost-of-living" increases?

(2) Is the supernumerary sheriff entitled to increases in his or her supernumerary pay based on any statutory increases in the current sheriff's pay or only to official "cost-of-living" increases?

(3) With the above questions in mind, can you define the term "cost-of-living" increase?

(4) With the above questions in mind, can you define the term "remuneration" as it is used in section 36-22-62(b) of the Code of Alabama? More specifically, what compensation, wages, or expenses are included in the term "remuneration"?

FACTS AND ANALYSIS

In your letter of request, you state the following:

Specifically, the issue is whether retired supernumerary Sheriff Robert Turner is entitled to a raise when current Sheriff James Johnson receives a raise.

The retired Sheriff of Autauga County is in a supernumerary status. Since he retired, all employees of the county have received annual "across-the-board" pay raises. The county, however, has not given any raises that are typically referred to as "cost-of-living" raises since the annual "across-the-board" increases are not tied to any cost-of-living index or other economic factors.

The qualifications and benefits for supernumerary sheriffs are specified in sections 36-22-60 through 36-22-65 of the Code of Alabama. ALA. CODE §§ 36-22-60 to 36-22-65 (Supp. 2001). Specifically, your questions contemplate whether and to what extent a supernumerary sheriff is entitled to an increase in his or her supernumerary pay as a result of the implementation of the Omnibus Pay Raise Bill, which is codified at section 11-2A-1, *et seq.* ALA. CODE § 11-2A-1, *et seq.* (2001). As such, your questions focus primarily on sections 36-22-62(b) and 11-2A-2(4) of the Code of Alabama. ALA. CODE § 36-22-62(b) (Supp. 2001), ALA. CODE § 11-2A-2(4) (Supp. 2004).

These Code sections state, in pertinent part, as follows:

(b) Those persons eligible under either subdivisions (1) or (2) of Section 36-22-60, that may elect to become a supernumerary sheriff shall be entitled to receive a cost-of-living increase as the remuneration of the office of sheriff increases from which the supernumerary sheriff elected to vacate. Said cost-of-living increases shall be equal to the percentage allowed said supernumerary sheriff of the present sheriff's remuneration.

ALA. CODE § 36-22-62(b) (Supp. 2001). "Any laws to the contrary notwithstanding, no person holding supernumerary office shall be entitled to any increases in compensation or expenses as a result of the implementation of any

salary adjustments provided for in this chapter.” ALA. CODE § 11-2A-2(4)(2001).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 334 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). Further, in cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 587 (Ala. 1986); *Soles v. State*, 820 So. 2d 163, 165 (Ala. Crim. App. 2001). Based on the foregoing, any sheriff that is in a supernumerary position is not entitled to an increase in his or her supernumerary pay as a result of the increase in compensation received by a current sheriff pursuant to section 11-2A-4. ALA. CODE § 11-2A-4 (Supp. 2004).

The terms “cost-of-living” and “remuneration” are not defined in section 36-22-62(b) of the Code of Alabama. In the absence of a definition, we look to the common meaning of the term. Frequently, courts rely upon Black’s Law Dictionary to ascertain the most appropriate definition. The terms “cost-of-living” and “remuneration” are found in Black’s Law Dictionary and are defined as “Cost-of-living clause. A provision (as in a contract or lease) that gives an automatic wage, rent or benefit increase tied in some way to cost-of-living rises in the economy.” BLACK’S LAW DICTIONARY 351 (7th ed. 1999). “Remuneration. Payment or compensation.” BLACK’S LAW DICTIONARY 1298 (7th ed. 1999).

The term “remuneration” is used in the definition of wages in certain other statutes in the Code of Alabama. For example, section 36-28-1 states as follows:

(1) WAGES. All remuneration for employment, as defined in subdivision (2) of this section, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of such remuneration which, even if it were for “employment” within the meaning of the federal Insurance Contributions Act, would not constitute “wages” within the meaning of that act.

ALA. CODE § 36-28-1 (Supp. 2001).

Given the definitions above and using the plain language of the statute, section 36-22-62(b) states that a supernumerary sheriff may receive an increase in his or her supernumerary pay when the current sheriff's wages or compensation increases. The statute states that the raise the supernumerary sheriff will receive will be in the form of a cost-of-living increase. Thus, the increase to the supernumerary is based on any increase in wages or compensation to the sheriff and not just cost-of-living raises.

Previously, in an opinion relating to supernumerary sheriffs, this Office determined that an increase to the sheriff's compensation would also be a raise in pay for the supernumerary. Opinion to Honorable James B. Johnson, Baldwin County Sheriff, dated July 15, 1999, A.G. No. 99-00248. That opinion, which was rendered before the enactment of the Omnibus Pay Raise Bill, further stated that the supernumerary's pay increase is to be calculated so that the ratio between the supernumerary's pay and that of the sitting sheriff, before the increase, remained the same after the increase. *Id.* Taking sections 36-22-62(b), 11-2A-2(4), and 11-2A-4 into consideration, the percentage increase for the sheriff and the supernumerary should be equal and not the percentage between the pay of the supernumerary and the sitting sheriff. The *Johnson* opinion is modified to the extent it conflicts with this opinion.

CONCLUSION

A supernumerary sheriff is not entitled to any increase in his or her supernumerary pay if the current sheriff's increased pay is a result of the Omnibus Pay Raise Bill.

A supernumerary sheriff, before the Omnibus Pay Raise Bill, was entitled to an increase in his or her supernumerary pay as a cost-of-living allocation when the compensation or wages of the current sheriff increased.

QUESTION

(5) From 1997 until Act 2000-108 was passed, the Autauga County Sheriff's pay was composed of a \$35,000 salary and a \$16,000 expense allowance. Sheriff Johnson contributed to the supernumerary fund from his expense allowance from 1997-2000. Was this contribution appropriate given that it was based on an expense allowance rather than salary?

FACTS AND ANALYSIS

Section 36-22-60 of the Code sets forth the necessary qualifications for a sheriff becoming a supernumerary. ALA. CODE § 36-22-60 (Supp. 2001). Specifically, that statute states as follows:

Any sheriff, on or after July 19, 1979, of any county of this state may elect to participate in the supernumerary sheriff's program provided by this article. Any sheriff, on or after July 19, 1979, of any county of this state:

.....

(2) Who has had 16 years of service credit as a law enforcement officer, 12 of which have been as a sheriff, and who has reached the age of 55 years;

may elect to become a supernumerary sheriff of the county by filing a written declaration to that effect with the Governor not more than 90 days prior to the end of the 16 year period or reaching the age of 55 years, both having been fulfilled, or at any time thereafter. . . .

ALA. CODE § 36-22-60 (Supp. 2001).

As an aside, as a result of Amendment 626 to the Alabama Constitution, which was ratified on January 6, 1999, Autauga County phased out its supernumerary programs. As such, this opinion is premised on the assumption that Sheriff Johnson was entitled to participate in the supernumerary program on or before January 6, 1999.

Section 36-22-61 states the manner in which deductions should be made to finance the sheriff's supernumerary fund. Specifically, "[t]he governing body of each county shall begin deducting, upon July 19, 1979, and each month thereafter, from the *salaries* of such sheriffs an amount equal to six percent of the monthly *salary* paid such sheriff. . . ." ALA. CODE § 36-22-61 (2004) (emphasis added).

Based on the foregoing, Sheriff Johnson was responsible for contributing six percent of his or her salary to the supernumerary fund. Your facts indicate that Sheriff Johnson contributed six percent of his salary and his expense allowance. From the statutes cited above, the only appropriate contribution would have been for Sheriff Johnson to contribute six percent of his salary.

An expense allowance is a reimbursement of an official's expenses in the performance of his or her duties. As such, it is a general rule that the expenses of public officers incurred in the performance of their official duties are distinct from and not included in the compensation allowed that officer. Opinion to Honorable Randall Shedd, Chairman, Cullman County Commission, dated March 5, 1980, A.G. No. 80-00235. Accordingly, this Office has held that the compensation of a supernumerary, upon which a supernumerary salary is based, does not include any portion of the expense allowances of the officials in question, but does include the salary, fees, and commissions thereof. *Id.*; Opinion to Honorable Harold Radford, Tax Assessor's Office, Lawrence County, dated April 8, 1987, A.G. No. 87-00148.

Since 2000 and the creation of the Omnibus Pay Raise Bill, however, many officials have been receiving expense allowances that are being phased in and becoming a part of the base pay at the beginning of the official's next term of office. ALA. CODE § 11-2A-2(5) (Supp. 2004). The authors of the Omnibus legislation clearly intended the expense allowance to be treated as salary and made a part of the official's salary at the beginning of the next term. *See* ALA. CODE § 11-2A-2(5) (Supp. 2004); Opinion to Honorable Lawrence M. Wettermark, Attorney for the Mobile County Commission, dated April 12, 2002, A.G. No. 2002-210. Section 11-2A-2(5) of the Omnibus Pay Raise Bill states that "[d]eductions from the increase [paid as an expense allowance] shall be made for supernumerary programs, as provided by law as if the increase were salary." ALA. CODE § 11-2A-2(5) (Supp. 2004). Thus, any official who received an expense allowance as a result of the Omnibus Pay Raise Bill is entitled to contribute a percentage of the expense allowance and a percentage of the salary to the supernumerary fund.

In the instant case, however, the sheriff made contributions from both his salary and his expense allowance before the adoption of the Omnibus Pay Raise Bill, which specifically allows contributions to be made from an expense allowance. There does not appear to be any authorization for the sheriff to make contributions to the supernumerary fund from the expense allowance that was in effect before the adoption of the Omnibus Pay Raise Bill. Thus, Sheriff Johnson's contributions were improper to the extent that such contributions were based on the expense allowance.

CONCLUSION

A person entitled to make contributions to a supernumerary fund shall make those contributions based only on his or her salary, fees, and commissions. An expense allowance is not considered to be salary, fees, or compensation. Thus, where there is no legislation specifically entitling a person to make contributions to a supernumerary fund based on an expense allowance, a person is not entitled to contribute to the supernumerary fund based on the expense allowance.

QUESTION

(6) If the expense allowance is not part of compensation subject to supernumerary-fund contribution, is the supernumerary sheriff entitled to increases in his or her supernumerary pay based on any expense allowance received by the current sheriff from 1997-2000?

FACTS AND ANALYSIS

From 1997-2000, the salary of a supernumerary sheriff was based upon the provisions of section 36-22-62 of the Code of Alabama. ALA. CODE § 36-22-62 (Supp. 2001). This statute sets the salary of the supernumerary based upon the current sheriff's salary. This statute is still controlling to the extent that an increase in a current sheriff's compensation is not as a result of an increase mandated by section 11-2A-4 of the Omnibus Pay Raise Bill. ALA. CODE § 11-2A-4 (Supp. 2004). The supernumerary sheriff would not be entitled to an increase in his or her supernumerary pay based on an increase in the sheriff's expense allowance that is not treated as salary. As stated previously, an expense allowance is not compensation or remuneration.

CONCLUSION

The supernumerary sheriff is not entitled to an increase in his or her supernumerary pay as a result of an increase in the sheriff's expense allowance because an expense allowance is not compensation or remuneration.

QUESTIONS

(7) Is the supernumerary sheriff entitled to increases in his or her supernumerary pay based upon the county's proposed expense allowance to the current sheriff?

(8) Will the supernumerary sheriff be entitled to an increase once the sheriff's expense allowance is converted to salary?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

In addition to the above, the county commission is in the process of taking the necessary steps to authorize an expense allowance for the sheriff. This allowance would be converted to salary at the beginning of the next term of office.

Based on the facts presented, the supernumerary sheriff would be entitled to an increase in his or her supernumerary compensation based on an increase in the sitting sheriff's remuneration, which occurred as a result of local legislation and not as a result of the Omnibus Pay Raise Bill. *See* ALA. CODE § 36-22-62(b) (Supp. 2001).

According to section 36-22-62(b), a supernumerary sheriff is entitled to an increase only when the remuneration of the sitting sheriff increases. *See* ALA. CODE § 36-22-62(b) (Supp. 2001). According to the proposed legislation, the remuneration of the sitting sheriff will not increase until the sheriff's next term of office. As such, the supernumerary sheriff should not receive an increase in his or her compensation until the sitting sheriff's expense allowance that is created by local legislation becomes a part of the sitting sheriff's salary.

As stated earlier, the increase received by the supernumerary sheriff should be in the form of a cost-of-living increase. The supernumerary sheriff should not receive an increase in his or her pay equal to the amount of the expense allowance. Instead, the supernumerary sheriff should be paid an amount equal to the percentage increase the expense allowance represents to the sheriff's compensation. By enacting the proposed legislation, the county should understand the potential ramifications this may have on future increases due to

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the sitting sheriff as outlined in section 11-2A-4(b). ALA. CODE § 11-2A-4(b) (Supp. 2004).

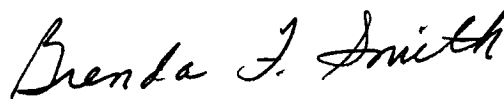
CONCLUSION

A county that enacts local legislation, i.e., outside of the Omnibus Pay Raise Bill, to increase the compensation of a sitting sheriff by having the expense allowance of the sheriff become part of the sheriff's salary at the beginning of the sheriff's next term, should give a cost-of-living increase to the supernumerary sheriff at the beginning of the sheriff's next term when the expense allowance becomes a part of the sheriff's salary.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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