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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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TROY KING
ATTORNEY GENERAL

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

Honorable James P. Nix, Jr.
Baldwin County Revenue Commissioner
Post Office Box 1549
Bay Minette, AL 36507

Revenue Commissioners - Omnibus Pay
Raise Bill - Merit Raise - Cost-of-Living
Raise - Baldwin County

The Omnibus Pay Raise Bill entitles the sheriff, revenue commissioner, and county commissioners to the same uniform merit raises granted by the county commission to eligible county employees at the time of approval of the county budget. Such increases, however, will be given in the form of an expense allowance until the incumbent officer's next term of office. When the incumbent's next term commences, the portion of the expense allowance that is a result of merit raises should be converted into salary.

A revenue commissioner or other local official serving in a county that has implemented the Omnibus Pay Raise Bill, who subsequently receives an increase by local legislation, is not entitled to a cost-of-living increase under section 11-2A-4(a) until the total compensation the official would have received under section 11-2A-4(a) is equal to or exceeds the increase provided by the local law.

Dear Mr. Nix:

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

QUESTION ONE

Based on the answer given to Question One in A. G. Opinion No. 2004-047, is the revenue commissioner entitled to any merit raises granted?

FACTS AND ANALYSIS

Your letter of request references a previous opinion rendered by this Office to the Baldwin County Commission. Specifically, you reference the opinion of the Attorney General to Honorable Jonathan H. Armstrong, Chairman of the Baldwin County Commission, dated December 23, 2003, A.G. No. 2004-047. In Question One of that opinion, Mr. Armstrong asked the following: "In Baldwin County, under section 11-2A-4(a) of the Code of Alabama, are applicable local officials entitled to the same uniform merit raises granted only to eligible county employees if funding to administer such raises is provided at the same time of the county budget?" *Armstrong* at 2.

In answering this question in the affirmative, this Office stated the following:

In Baldwin County, the "applicable" local officials that fall under the Omnibus Pay Raise Bill, section 11-2A-1 through 11-2A-8 of the Code of Alabama, are the sheriff, revenue commissioner, and county commissioners.

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As your request points out, a question similar to yours was addressed in a previous opinion issued by this Office. *See*, Opinion of the Attorney General to Honorable Lawrence M. Wettermark, Attorney, Mobile County Commission, dated April 5, 2002, A.G. No. 2002-203. As the *Wettermark* opinion states, merit raises are not intended to be awarded to every employee. The uniformity of a merit raise, then, cannot mean that it must be uniformly paid to every county employee, but rather that a uniform amount of raise must be paid to every employee who meets the

criteria to qualify for the raise. This Office feels that this is the correct interpretation and restates it here.

Armstrong at 2-3.

The *Armstrong* opinion concluded that, under section 11-2A-4(a) of the Code of Alabama, applicable local officials in Baldwin County are entitled to the same uniform merit raises granted to eligible county employees at the time of the approval of the county budget. *Armstrong* at 3.

Accordingly, a revenue commissioner is one of the local officials that falls under the Omnibus Pay Raise Bill. As such, the revenue commissioner is entitled to the same uniform merit raise granted to eligible county employees at the time of the approval of the county budget. As stated in the *Armstrong* opinion, any increase that should be distributed to an incumbent officeholder should be paid as an expense allowance until the beginning of the incumbent's next term when that portion of the expense allowance should be converted into salary. ALA. CODE § 11-2A-2 (Supp. 2004).

CONCLUSION

The Omnibus Pay Raise Bill entitles the sheriff, revenue commissioner, and county commissioners to the same uniform merit raises granted by the county commission to eligible county employees at the time of approval of the county budget. Such increases, however, will be given in the form of an expense allowance until the incumbent officer's next term of office. When the incumbent's next term commences, the portion of the expense allowance that is a result of merit raises should be converted into salary.

QUESTION TWO

If Question One is answered in the affirmative, would the conclusion to Questions Three and Four in Opinion 2004-047 apply?

FACTS AND ANALYSIS

In Baldwin County, merit raises are distributed to qualifying employees in accordance with the practices and procedures of the personnel department, which was created by Act 95-351. This act does not apply to local officials.

The manner of distribution of the merit increases, however, shall be dictated by general legislation, local legislation, or constitutional amendment. It is the opinion of this Office that the answers given to Questions Three and Four of the *Armstrong* opinion are correct. That opinion is incorporated by reference herein.

CONCLUSION

The grant of the uniform merit raises should be applied using the methods set forth in the Code of Alabama. This Office has previously opined that, where the right to compensation was an expectation or matter of contract during employment or where the right to compensation arose at the time services were rendered, section 68 of the Constitution of Alabama is not violated. As such, applicable local officials are entitled to be paid, retroactively, the same uniform raises granted to eligible county employees at the time of the approval of the county budget. Again, an incumbent should receive any increase in the form of an expense allowance during his or her term, but as salary at the beginning of the incumbent's next term.

QUESTION THREE

Based on the Omnibus Pay Raise Bill and the recent opinion [A.G. No. 2004-047], is the revenue commissioner due any cost-of-living raise given by the county commission?

FACTS AND ANALYSIS

In your letter you stated the following:

The Baldwin County Commission voted to implement the Omnibus Pay Raise Bill for the local officials, which included the county revenue commissioner. At that time the county revenue commissioner received the maximum amount allowed in the form of an expense allowance and then, just before the election for a new term, the county commission, by virtue of a local act, voted to set the salary of the revenue commissioner at an amount higher than the maximum set forth in the Omnibus Pay Raise Bill. Finally, upon taking office in

October 2003, the expense allowance was rolled into the new base salary set by the county commission.

Your question is similar to an opinion previously rendered by this Office to Honorable William M. Harper, Elmore County Revenue Commissioner, dated December 30, 2003, A.G. No. 2004-050. In the *Harper* opinion, this Office stated that the revenue commissioner would be entitled to a cost-of-living raise if the raise was approved at the time the county budget was approved. It is the opinion of this Office that this is the correct interpretation of law; however, under the current facts as stated, the revenue commissioner would not be entitled to a cost-of-living increase.

At the time that the Omnibus Pay Raise Bill was implemented in Baldwin County, the revenue commissioner was already receiving the maximum amount allowable in the form of an expense allowance. Pursuant to local legislation, the Baldwin County Commission set the salary of the revenue commissioner at a higher amount. Section 11-2A-4(b) of the Code of Alabama sets a limitation on the increases a local official may receive, if the official's salary is increased by local legislation in excess of what is provided for in section 11-2A-4(a) of the Code of Alabama. Section 11-2A-4(b) states the following:

Any provision of this chapter to the contrary notwithstanding, the Legislature, by local law, may increase the compensation for local officials covered under this chapter. However, if a local law increases the compensation of a local official, such local official shall not be entitled to any cost-of-living adjustments pursuant to the procedure in subsection (a), until such time as the total compensation he or she would have received under subsection (a) is equal to or exceeds the increase provided by the local law.

ALA. CODE § 11-2A-4(b) (Supp. 2004).

Based on the foregoing, the revenue commissioner would not be entitled to any cost-of-living increases until such time that the total compensation the revenue commissioner would have received under subsection (a) is equal to or exceeds the increase provided by the local law.

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CONCLUSION

A revenue commissioner or other local official serving in a county that has implemented the Omnibus Pay Raise Bill, who subsequently receives an increase by local legislation, is not entitled to a cost-of-living increase under section 11-2A-4(a) until the total compensation the official would have received under section 11-2A-4(a) is equal to or exceeds the increase provided by the local law.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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