



2005 - 139

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

May 27, 2005

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

Honorable Jerry C. Pow
Bibb County Judge of Probate
8 Court Square West, Suite A
Centreville, Alabama 35042

Probate Judges – County Commissions –
Attorneys Fees

The county commission is not required to pay the probate judge's attorney's fees incurred in a legal matter between the probate judge and the county commission, but may do so pursuant to a settlement agreement or if required by a court order.

Dear Judge Pow:

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

QUESTION

If a probate judge who does not chair the county commission hires legal counsel to represent himself or herself in resolving a legal matter between the probate judge and the county commission, is the county commission responsible for paying the legal expenses the probate judge incurred to settle the matter?

FACTS AND ANALYSIS

A similar question was considered in an opinion of the Attorney General to Honorable Larry H. Plott, Franklin County Sheriff, dated January 5, 1990, A.G. No. 90-00079. The question asked was, if a sheriff files suit in his capacity as sheriff against the county governing body and hires an attorney to represent the sheriff's department, is the county commission responsible for the attorney's fees of the sheriff's department? It was determined that the county commission is not required to pay the sheriff's attorney's fees incurred in a

lawsuit filed against the county commission, but the county commission may do so pursuant to a settlement agreement or if required to do so by a court order. Quoting from that opinion, this Office stated as follows:

Code of Alabama 1975, §11-1-9 specifically allows the county commission to pay the attorney's fees and other costs of defending a county official when the lawsuit is based upon the performance of official duties. It should be noted that even in these cases, the county commission is not required to pay the attorney's fees and other costs. We can find no similar provision which allows or requires the county commission to pay the attorney's fees in connection with the filing of a lawsuit by a county official. Nevertheless, it is our opinion that as a part of a settlement agreement between the county commission and the sheriff's department the county commission could agree to pay the sheriff's attorney's fees.

Plott at 2 (emphasis in original). This office is not cognizant of any other statutory law or common law axiom that requires payment of the legal fees of the probate judge in this case.

CONCLUSION

The county commission is not required to pay the probate judge's attorney's fees incurred in a legal matter between the probate judge and the county commission, but may do so pursuant to a settlement agreement or if required by a court order.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division