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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Post Office Box 8486
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Sheriffs – Deputies – Compensation –
Discretionary Funds – County
Commissions

The Sheriff of Etowah County (“Sheriff”) is not required to seek or obtain the approval of any other county official before making payments from the Sheriff’s Law Enforcement Fund (“Fund”).

The Sheriff may not use the Fund to provide incentive compensation to deputy sheriffs and jailers.

The Etowah County Commission could use the Fund for such compensation with the approval of the Sheriff, provided the compensation is prospective, is treated as a regular part of an employee’s compensation, is made pursuant to a written policy, and is in exchange for additional consideration provided by the employees.

Dear Mr. Rhea:

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

QUESTION

Can the Sheriff of Etowah County use the Sheriff's Law Enforcement Fund to provide incentive compensation to deputy sheriffs and jailers without the approval of the Etowah County Commission?

FACTS AND ANALYSIS

Your request states that the Sheriff is considering disbursing excess discretionary funds, not otherwise encumbered in a line-item budget, to provide an occasional (not more than annual) payment of incentive compensation to deputy sheriffs and jailers. You further state that the additional compensation would be made in an equitable manner.

"This Office has opined on numerous occasions that sheriffs have broad discretion in the use of the funds deposited into their pistol permit funds." Opinion to Honorable Larry Amerson, Sheriff, Calhoun County Sheriff's Office, dated September 17, 1999, A.G. No. 99-00284. The local act giving the sheriff authority over pistol permit fees in the Etowah County Sheriff's Law Enforcement Fund is no exception, providing only that the funds be used for law enforcement purposes. 1987 Ala. Acts No. 87-644, 1149. As this Office has stated, "[o]nce funds are paid into the pistol permit fund, . . . the law contains no other requirement that the Sheriff seek or obtain the approval of any other county official before making payments from this account." Opinion to Honorable Mike Hale, Jefferson County Sheriff, dated April 23, 1999, A.G. No. 99-00178, at 2.

In an opinion to Honorable Charles D. Baker, it was determined that the Walker County Sheriff's Pistol Permit Fund could be used to pay salaries of the Court Services Commission if the sheriff determined that those expenses were for law enforcement purposes. Opinion to Honorable Charles D. Baker, District Attorney, dated February 11, 1999, A.G. No. 99-00109.

Although the Law Enforcement Fund may generally be used for salaries, whether those funds may be directly expended for salaries for deputy sheriffs and jailers requires closer analysis. This Office has previously addressed the authority of the sheriff to use discretionary funds to supplement the salary of staff. Most recently, in answering this question negatively regarding jail store funds, this Office concluded that, "[u]nder

section 14-6-105 of the Code, only the . . . [c]ounty [c]ommission may pay the salaries of jail staff and sheriffs' deputies." Opinion to Honorable Dennis Miller, Jackson County Sheriff, dated October 2, 2007, A.G. No. 2008-003, at 3. That opinion explained as follows:

Section 14-6-105 of the Code of Alabama addresses the compensation of staff at county jails. Section 14-6-105 reads, in part, as follows:

The sheriff, in case of a county jail, or the proper governing authority, in case of a municipal jail, shall appoint, direct and control said deputy, watchman or guard, and *the county commission* or the proper municipal governing authority, as the case may be, *shall fix a reasonable salary and the same shall be paid out of the funds of the county or of the municipality if it is a town or city jail in which the jail is located.*

ALA. CODE § 14-6-105 (1995) (emphasis added). This Office has previously stated that section 14-6-105 requires the county commission to pay the salaries of jailers from the county treasury. Opinion to Honorable Hobson Manasco, Jr., Attorney, Winston County, dated December 22, 2003, A.G. No. 2004-045. The Alabama Supreme Court has also held that "the law obliges the Commission to pay the [correctional officers'] compensation from county funds and does not oblige the State or the sheriff to pay the plaintiffs' compensation from State funds." *Employees of the Montgomery County Sheriff's Dep't v. Marshall*, 893 So. 2d 326, 331 (Ala. 2004).

Miller at 2 (emphasis in original).

This Office has similarly stated that the sheriff could not supplement the administrative assistant's salary from the Mobile County Pistol

Permit Fund because the act creating the position mandated that the salary “shall be paid from the general funds” of the county. Opinion to Honorable Jack Tillman, Mobile County Sheriff, dated July 30, 2002, A.G. No. 2002-299, at 2.

The county, however, may exercise control over discretionary funds of the sheriff by mutual agreement between the parties. In an opinion to Honorable Mose Jones, Jr., it was determined that the county could not use funds from the Lawrence County Sheriff’s Law Enforcement Fund to offset the expenses of operating the jail unless the sheriff agreed to utilize the funds for that purpose. Opinion to Honorable Mose Jones, Jr., Lawrence County Commission Chairman, dated July 30, 2003, A.G. No. 2003-201. Therefore, the county could agree with the sheriff to use the Law Enforcement Fund for incentive compensation for deputies and jailers.

Section 68 of article IV of the Recompiled Constitution of Alabama prohibits a county or municipality from giving public employees, officers, agents, or contractors additional payment for services already rendered. ALA. CONST. art. IV, § 68. Deputy sheriffs and jailers are considered employees of the county for purposes of compensation. Opinion to Honorable John Mark Tirey, Sheriff, Walker County, dated September 13, 1996, A.G. No. 96-00313.

This Office has stated that section 68 prohibits elected officials from giving seasonal lump-sum bonuses to employees from discretionary funds unless there was an expectation or agreement for the additional salary. Opinion to Honorable Bill English, Lee County Probate Judge, dated August 24, 2004, A.G. No. 2004-208. This requirement was clarified in an opinion to Honorable Joe W. Campbell, Attorney, Health Care Authority of North Alabama, dated September 28, 2006, A.G. No. 2006-153. That opinion, in considering an incentive plan, analogized section 68 under a similar provision for health care authorities. The *Campbell* opinion concluded that the Health Care Authority of North Alabama could offer its employees incentive compensation, provided the compensation was prospective, was treated as a regular part of an employee’s compensation, was made pursuant to a written policy, and was in exchange for additional consideration provided by the employees. Accordingly, even if the sheriff and county agree to use the funds in the Law Enforcement Fund for incentive compensation, they still must comply with section 68.

CONCLUSION

The Sheriff of Etowah County is not required to seek or obtain the approval of any other county official before making payments from the Sheriff's Law Enforcement Fund.

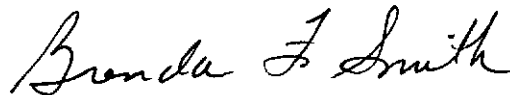
The Sheriff may not use the Fund to provide incentive compensation to deputy sheriffs and jailers.

The Etowah County Commission could use the Fund for such compensation with the approval of the Sheriff, provided the compensation is prospective, is treated as a regular part of an employee's compensation, is made pursuant to a written policy, and is in exchange for additional consideration provided by the employees.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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