



2009-041

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Luke Cooley  
Houston County Judge of Probate  
Post Office Drawer 6406  
Dothan, Alabama 36301

Probate Judges - Fees - County  
Commissions - Budgets

The funds collected by the Houston County Probate Judge pursuant to Act 97-488 are public funds that must be included in an estimate of revenue to be furnished to the county under section 11-8-3(d) of the Code of Alabama.

Dear Judge Cooley:

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

QUESTION

Are the fees collected pursuant to Act 97-488 ex officio fees under section 11-8-3(d)(2) of the Code of Alabama?

FACTS AND ANALYSIS

Act 97-488 of the 1997 Legislative Session is a local act applicable to Houston County. 1997 Ala. Acts No. 97-488, 848. Section 2 of the act authorizes the probate judge to charge an additional filing fee of three dollars. *Id.* at 849. The funds collected pursuant to the act are to be paid into a "special fund of the judge of probate to be earmarked for probate record accountability and preservation." *Id.*

You question whether these funds must be included as estimated revenue for budget purposes under section 11-8-3 of the Code of Alabama. That section provides for the annual budget of the county. Act 2007-488 amended section 11-8-3, primarily adding the time requirement, the ex officio fees language, and subdivision (2) as follows.

(d) In order that the budget adopted is based upon an estimate of revenue and operating expenditures as nearly correct as possible, at least 60 days before the meeting of the county commission at which the county budget is adopted:

(1) *Any public official who receives public funds, including any official entitled to ex officio fees, or who issues any kind of order payable out of the county treasury without approval of such county commission shall furnish to the county commission in writing an estimate of the revenue and of the anticipated expenditures the official will be called upon to make during the next fiscal year.*

(2) The judge of probate, tax officials, sheriff, county treasurer, and any other county official or employee named by the county commission shall prepare and submit to the county commission an itemized estimate of the amount the official or employee believes to be necessary for personnel, office supplies, and other expenditures during the following fiscal year. *Any official entitled to ex officio fees shall include in his or her estimate the estimated amount of any ex officio fees the official will receive during the following fiscal year.*

ALA. CODE § 11-8-3 (Supp. 2008) (emphasis added).

This Office, in construing the previous version of the statute, has explained that, “[t]o aid in the adoption of the budget, the various county officials and department heads are to furnish an estimate of the income

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and expenses of their offices or departments.” Opinion to Honorable Bobby M. Junkins, Probate Judge, dated June 8, 1989, A.G. No. 89-00294, at 2-3.

Under the well-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, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The amendments to sections 11-8-3 clarify that county officials must report public funds from any source and that ex officio fees are public funds. The funds collected pursuant to Act 97-488, as public funds, are subject to section 11-8-3(d). In light of this conclusion, the part of your question regarding whether the funds are ex officio fees is moot.

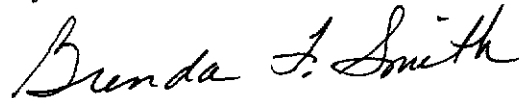
#### CONCLUSION

The funds collected by the Houston County Probate Judge pursuant to Act 97-488 are public funds that must be included in an estimate of revenue to be furnished to the county under section 11-8-3(d) of the Code of Alabama.

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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