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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Reese McKinney, Jr.  
Montgomery County Probate Judge  
Post Office Box 223  
Montgomery, Alabama 36101-0223

Absentee Election Manager –  
Compensation – County Employees  
– Expenses – Elections

Section 17-11-2 of the Code of Alabama provides that a county employee who has been lawfully designated to serve as the absentee election manager in the place of the circuit clerk is entitled to the compensation or per diem provided for performing the duties relating to absentee ballots as set forth in section 17-11-14 of the Code of Alabama. This compensation or per diem is an expense that may be reimbursed to the county under the provisions of section 17-16-2 through 17-16-6 of the Code of Alabama.

Dear Judge McKinney:

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

QUESTION

May a county employee who has been lawfully designated to serve as the absentee election manager in place of the circuit clerk be paid the per diem or compensation provided for performing the duties relating to absentee ballots as set

forth in section 17-11-14 of the Code of Alabama, and is this an expense that may be reimbursed to the county commission as set forth in section 17-16-2(2) and related sections of title 17 of the Code of Alabama?

#### FACTS AND ANALYSIS

In each county, the handling and administration of absentee ballots is performed by an "absentee election manager." ALA. CODE § 17-11-2 (2006). This section states as follows:

In each county there shall be an "absentee election manager," who shall fulfill the duties assigned by this chapter. The circuit clerk of the county shall, at his or her option, be the absentee election manager. If the circuit clerk of the county declines the duties of absentee election manager, *the appointing board shall thereupon appoint an absentee election manager, who shall be a person qualified by training and experience, who is a qualified elector of the county and who is not a candidate in the election to perform the duties assigned by this chapter.* The county commission shall designate the place or office where such duties shall be performed. Such place or office shall be open on the days and during the hours as that of the circuit clerk prior to each election. Any person so appointed shall have all the powers, duties, and responsibilities of the circuit clerk for the purposes of this chapter, including the power to administer oaths. Such powers, duties, and responsibilities shall terminate when the election results are certified. *The absentee election manager or circuit clerk shall be entitled to the same compensation for the performance of his or her duties as is provided in Section 17-11-14.*

*Id.* (emphasis added).

This section specifically provides that if the circuit clerk declines to perform the duties of the absentee election manager, the person appointed to perform those duties in the place of the circuit clerk is entitled to the same compensation for the performance of those duties as the circuit clerk would have been entitled for the performance of those duties. The amount of the compensation of the absentee election manager is determined as set forth in section 17-11-14 of the Code and may vary depending upon whether a local law or a general law of local application is applicable. ALA. CODE § 17-11-14 (2006). This Office has previously determined that the compensation to be paid to the circuit clerk for handling the absentee ballots is in addition to the normal salary of the circuit clerk. Opinion to Mr. Allen L. Tapley, Administrative Director of Courts, dated March 27, 1979, A.G. No. 79-00338.

Section 17-11-14 also provides that any reimbursement for this compensation shall be governed by chapter 16 of title 17. For example, section 17-16-3 of the Code provides that the State of Alabama "shall reimburse a county for one half of all sums expended by the county in payment of expenses incurred in holding and conducting an election in which candidates for both federal or state and county offices are nominated or both federal or state and county officials are elected." ALA. CODE § 17-16-3 (2006). Section 17-16-4 provides that the State of Alabama "shall reimburse a county for all sums expended by the county in payment of expenses incurred in holding and conducting an election in which only candidates for federal or state offices are nominated or federal or state officials are elected." ALA. CODE § 17-16-4 (2006). Reimbursements are also provided for holding and conducting constitutional amendments. ALA. CODE §§ 17-16-5 & 17-16-6 (2006). "Expenses" are defined in section 17-16-2 and include "[t]he per diem provided by law for the clerk or other official acting in his or her stead for handling absentee ballots." ALA. CODE § 17-16-2(2) (2006). Thus, the county is entitled to be reimbursed for the compensation or per diem paid to the "absentee election manager" as specified under the terms of these Code sections.

There are no provisions in the Code of Alabama that prohibit the appointment of a county employee as the person to serve as the absentee election manager in the place of the circuit clerk. Nor are there any provisions that prohibit that employee from receiving the compensation for the performance of the additional duties required for serving as the absentee election manager. Accordingly, as provided in section 17-11-2 of the Code, a county employee who is appointed to serve as the absentee election manager is entitled to the compensation established by section

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17-11-14 of the Code, and this compensation or per diem is an expense that may be reimbursed to the county under chapter 16 of title 17 of the Code.

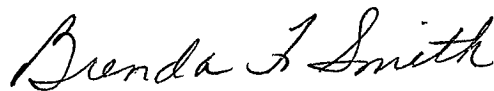
CONCLUSION

Section 17-11-2 of the Code of Alabama provides that a county employee who has been lawfully designated to serve as the absentee election manager in the place of the circuit clerk is entitled to the compensation or per diem provided for performing the duties relating to absentee ballots as set forth in section 17-11-14 of the Code of Alabama. This compensation or per diem is an expense that may be reimbursed to the county under the provisions of section 17-16-2 through 17-16-6 of the Code of Alabama.

I hope this opinion answers your question. 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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