S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 01-029

Salary of Hamblen County General Sessions Judge

QUESTIONS

Hamblen County is a county of the first class for purposes of determining the salary of a general sessions judge. The general sessions court exercises probate and domestic relations jurisdiction. Under Tenn. Code Ann. § 16-15-205(d)(3), general sessions judges who exercised such jurisdiction were entitled to a salary supplement of five per cent of their base salary. That statute was repealed effective in 1993. The previous term of the Hamblen County General Sessions Judge began in 1990. The judge did not request the five per cent supplement and was appointed to a different office in 1996. Another individual filled the remainder of the term and was elected to a new term in 1998.

1. How should the salary of the judge who took office in 1996 be calculated for the remainder of the 1990 term?

2. How should the salary of the judge for the term beginning in 1998 be calculated?

OPINIONS

1. The salary of the judge for the term beginning in 1990 is the $70,000 base salary, plus annual adjustments to the base. As of 1996, this figure would include all of the annual adjustments made through July 1, 1995, for that salary due before July 1, 1996, and all the annual adjustments made through July 1, 1996, for the salary due thereafter. Annual adjustments would then be added the subsequent July 1, 1997, and July 1, 1998. Because the judge serving the remainder of the term took office after the statute providing for the five per cent supplement was repealed, that individual is not entitled to that supplement. Based on our research, the Hamblen County General Sessions Judge is not entitled to any additional supplements under any other general or private statute.

2. The salary of the judge for the term beginning in 1998 is the $70,000 base salary, plus all annual adjustments due until July 1, 1998. To this sum should be added the one-time increase of $10,000 effective September 1, 1998. The salary should then be increased annually as required under Tenn. Code Ann. § 8-23-103.

ANALYSIS

1. Salary for New Judge Serving Remainder of Eight-Year Term

This opinion addresses the salary payable to the Hamblen County General Sessions Judge. This judge exercises divorce and probate jurisdiction (1947 Tenn. Priv. Acts Ch. 235, § 3, Tenn. Code Ann. § 16-16-107 (transferring all powers of county court, including probate, to Hamblen County General Sessions Court); 1951 Tenn. Priv. Acts Ch. 374 (divorce)). The current judge's term began in 1998. Tenn. Code Ann. § 16-15-205(d)(3) formerly provided:

> If a general sessions judge exercises either probate or divorce jurisdiction, or both, the base salary for the judge shall be increased by an amount equal to five percent (5%) of the base salary. Provided, however, no general sessions judge in a county of the sixth, seventh, or eighth class shall receive the salary supplement established by this subpart.

Tenn. Code Ann. § 16-15-205(d)(3)(repealed by 1993 Tenn. Pub. Acts Ch. 241, § 3). Under Tenn. Code Ann. § 16-15-5003(a)(1), effective September 1, 1990, the annual base salary for a general sessions judge in a county of the first class was set at $70,000. That statute does not provide for salary supplements for a general sessions judge in a first class county exercising additional jurisdiction. But this Office concluded that, until Tenn. Code Ann. § 16-15-205 was expressly repealed in 1993, salary supplements under subsection (d) of that provision were still in effect. Further, these supplements were constitutionally required to continue to be paid to any judge whose term began before the 1993 repeal, through the end of that term. Op. Tenn. Atty. Gen. 94-44 (April 4, 1994). This conclusion was based on Article VI, Section 7 of the Tennessee Constitution, which provides in relevant part:

> The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished *during the time for which they are elected.*

(Emphasis added). The opinion concluded that the change in the salary supplement could not, under this provision, affect the salary of a judge whose term began before 1993.

The request indicates that the previous term of the Hamblen County General Sessions Judge began in 1990, but that the individual originally elected to that term never requested the salary supplement for exercising probate and divorce jurisdiction. That individual was appointed to a different judicial office in 1996. A different individual served the remaining two years of the term beginning in 1990 and then was elected to a new term in 1998. The first question is how the salary of the individual who served the remaining two years of the 1990 term should be calculated. Clearly, that individual would be entitled to receive the $70,000 base salary together with all the annual adjustments made under Tenn. Code Ann. §

16-15-5003. But we conclude that that individual was not entitled to receive the five per cent supplement because the statute providing for its payment was repealed before that individual assumed judicial office.

As noted above, Article VI, Section 7 of the Tennessee Constitution provides that the salaries of judges "shall not be increased or diminished *during the **time** for which they are elected.*" (Emphasis added). The Tennessee Supreme Court has concluded that, under this provision, a statutory change in judicial salary cannot change the salary of a judge who took office before it became effective, but a statutory change in salary may apply to a judge who takes office after it is passed, even if he or she is filling out an unexpired judicial term that began before the statute took effect. *Gaines v. Horrigan,* 72 Tenn. 608 (1880). In that case, the General Assembly had passed a statute lowering judges' salaries. The Court concluded that the statute, which by its terms applied to judges "hereafter appointed or elected," could constitutionally apply to a judge who had been appointed after the effective date of the statute to fill an unexpired term. The Court held that, by prohibiting only salary changes during the "time" for which judges are elected, rather than during the "term," Article VI, Section 7 permitted salary changes before the time the judge was appointed, even though the change became effective during the constitutional eight-year term. 72 Tenn. at 614-15. *See also* Op. Tenn. Atty. Gen. 85-287 (December 2, 1985) (a change in judges' retirement benefits could constitutionally apply to judges appointed or elected after the statute became effective).

The General Assembly deleted Tenn. Code Ann. § 16-15-205 from the Code in 1993. 1993 Tenn. Pub. Acts Ch. 241, § 3. This act became effective on July 1, 1993. 1993 Tenn. Pub. Acts Ch. 241, § 72. Based on the facts presented, the individual who filled out the remainder of the previous judge's term took office in 1996. The changes to judges' salaries in the 1993 act could therefore constitutionally apply to that individual. For this reason, we conclude that that individual was not entitled to receive the five per cent supplement for divorce and probate jurisdiction under Tenn. Code Ann. § 16-15-205(d)(3). Based on our research, the Hamblen County General Sessions Judge is not entitled to any additional supplements under any general or private statute.

2. Salary for Term Beginning in 1998

The second question is how the salary of the judge should be calculated for the full term beginning in 1998. Effective September 1, 1998, all general sessions judges received a one-time increase under Tenn. Code Ann. § 16-15-5003(i). Under this section, the annual salary for every general sessions judge was increased over annual compensation and supplements and annual adjustments each judge actually received as of August 31, 1998, by twenty per cent of that compensation or ten thousand dollars, whichever was less. It appears that, as a judge in a county of the first class, the Hamblen County General Sessions Judge would have been entitled to a $10,000 salary increase on the figure calculated above.

Under Tenn. Code Ann. § 16-15-5003(i)(3), on July 1, 1999, and each succeeding July 1, the base salary must be adjusted in accordance with Tenn. Code Ann. § 8-23-103. Under Tenn. Code Ann.

§ 16-15-5003(j), no judge of a general sessions court may be paid a salary greater than the salary paid to a judge of the circuit court.

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