S T A T E O F T E N N E S S E E
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Opinion No. 02-047

Salary of New Lake County General Sessions Judge

QUESTIONS

1. If the current Lake County General Sessions Judge resigns, would the person appointed to fill the vacancy be full-time or part-time?

2. What salary would the new person receive under current law?

3. Under 1987 Tenn. Priv. Acts Ch. 49, the position of the Lake County General Sessions Judge is full-time. The private act also contains a special provision for the salary of the Lake County General Sessions Judge. If the current judge resigns, could this private act constitutionally be repealed before the appointment and/or election of a new judge to fill the vacancy?

OPINIONS

1. It is our opinion that 1987 Tenn. Priv. Acts Ch. 49 was superseded by Tenn. Code Ann. § 16-15-5002(b) to the extent that the private act makes the office of Lake County General Sessions Judge a full-time position. Under the statute, the position of general sessions judge in a county with the population of Lake County is part-time. Therefore, any successor to the current incumbent would hold a part-time office. The Lake County General Sessions Judge, however, is entitled to the salary under the private act, provided it is higher than the salary under Tenn. Code Ann. § 16-15-5003.

2. The salary for the new judge should be the total of the base salary of $20,000, plus all required cost of living supplements from 1991 to 1998. To this should be added the $10,000 salary supplement for juvenile and domestic relations jurisdiction. If this figure is higher than $36,730, the salary effective September 1, 1998 is this figure plus $10,000 or twenty percent, whichever is higher. If this figure is lower than $36,730, then the salary effective September 1, 1998 is $36,730 plus twenty percent. To the September 1, 1998 salary — whichever figure is used — should be added adjustments on July 1, 1999, July 1, 2000 and July 1, 2001, as required under Tenn. Code Ann. § 16-15-5003(i)(3). The salary for the judge is the higher of this result or $39,305, the salary payable to a general county officer under Tenn. Code Ann. § 8-24-102 effective July 1, 2001.

3. Yes, the repeal of the private act governing the salary of the Lake County General Sessions Judge may constitutionally apply to the salary of a successor to the current incumbent, so long as the act is repealed before the successor is appointed to fill the vacancy.

ANALYSIS

1. Lake County General Sessions Judge as Full-Time Position

This opinion addresses several questions regarding the status and salary of the Lake County General Sessions Judge. This Office addressed several issues regarding the salary of that judge in Op. Tenn. Atty. Gen. 00-165 (revised) (December 20, 2000). The request indicates that the current incumbent of that office is on medical leave and may not return to office. The request asks several questions regarding the salary and status of the judge appointed and then elected to serve the remainder of the term.

The first question is whether the position of Lake County General Sessions Judge is a full-time or a part-time position. As the request indicates, Lake County, under the 1990 and the 2000 census, is a county of the seventh class for the purpose of determining the compensation of a general sessions judge. Tenn. Code Ann. § 16-15-5001(a)(7). Under Tenn. Code Ann. § 16-15-5002(b):

> General sessions judges in Class 4 through Class 8 counties *shall* be considered part-time judges and *shall not* be prohibited from the practice of law or other gainful employment while serving as judge except to the extent such practice or employment constitutes a conflict of interest.

(Emphasis added). This statute was enacted by 1988 Tenn. Pub. Acts Ch. 698. A private act, however, provides that the position of General Sessions Judge of Lake County is a full-time position effective September 1, 1990. 1987 Tenn. Priv. Acts Ch. 49. Under the same act, the salary for the Lake County General Sessions Judge is the amount established under the law governing general sessions judges, or the amount paid other county officers under Tenn. Code Ann. § 8-24-102, whichever is higher.

Private acts are superseded to the extent necessary to give effect to a general statutory plan. *State ex rel. Strader v. Word*, 508 S.W.2d 539 (Tenn. 1974). We think the General Assembly intended the statute regarding the full-time and part-time status of general sessions judges to apply statewide. Op. Tenn. Atty. Gen. U96-018 (February 29, 1996). Therefore, to the extent the private act makes the position full-time, it is superseded by Tenn. Code Ann. § 16-15-5002(b). But, as we noted in Op. Tenn. Atty. Gen. 00-165 (revised), the statutes governing general sessions judges' salaries provide that nothing in that statutory scheme prohibits a county, by private act, from compensating its general sessions judge or judges at levels in excess of what is required by those statutes. Tenn. Code Ann. § 16-15-5003(g). That statute provides:

> Any private or public act *in effect on September 1, 1990*, that provides greater compensation for a general sessions judge than is required by this section shall, *to the extent of the judge's amount of compensation*, prevail over the provisions of this part, and the base salary of such judge shall be the salary paid to the holder of that office on August 31, 1990, pursuant to such public or private act plus a percentage increase thereto equivalent to the same percentage increase herein given by subsection (a) to a judge of a Class 6 county. Nothing in this part shall prevent a county from establishing and funding the position of part-time general sessions judge in a county with a full-time general sessions judge.

Tenn. Code Ann. § 16-15-5003(g) (emphasis added). For this reason, the Lake County General Sessions Judge is entitled to the salary under the 1987 private act, to the extent it is higher than the salary under Tenn. Code Ann. § 16-15-5003.

2. Salary of Successor to Lake County General Sessions Judge

The next question is the salary of the Lake County General Sessions Judge who succeeds the current judge if the office becomes vacant. This Office has concluded that, under the private act governing the Lake County General Sessions Judge, the salary must be calculated each year under the general law, and then compared to the salary due that year for a county officer in a county of the sixth class. Op. Tenn. Atty. Gen. 00-165 (revised) (December 20, 2000). The judge is entitled to the higher of the two results.

Under the general law, the salary of the general sessions judge should be calculated as follows. Effective September 1, 1990, a judge of a county of the seventh class was entitled to a base salary of $20,000. Tenn. Code Ann. § 16-15-5003(a)(7). The base salary was adjusted each year from July 1, 1991 to July 1, 1998 under Tenn. Code Ann. § 16-15-5003(f). The judge was also entitled to a salary supplement totalling $10,000 for juvenile and domestic relations jurisdiction, Tenn. Code Ann. § 16-15-5003(d), but § -5003(f) authorizes no annual adjustments to this portion of the salary. Tenn. Code Ann. § 16-15-5003(i)(1) provides:

> Effective September 1, 1998, the annual salary for a general sessions court judge shall be increased over the annual compensation and supplements and annual adjustments which each judge actually received as of August 31, 1998, by the lesser of:
> (A) Ten thousand dollars ($10,000); or
> (B) Twenty percent (20%) or such annual compensation and supplements and annual adjustments as of August 31, 1998.

But this statute must also be read in conjunction with the private act. Under that act, as of August 31, 1998, the general sessions judge was entitled either to the result of the calculations described above or the salary for a county officer in a county of the sixth class as of the same date, whichever was higher. As of August 31, 1998, a general county officer in a county of the sixth class was entitled to a salary of $36,730. Tenn. Code Ann. § 8-24-102 (notes). The salary for the judge effective September 1, 1998 was the higher of these two figures plus twenty percent. To this figure should be added adjustments on July 1, 1999, July 1, 2000, and July 1, 2001, as required under Tenn. Code Ann. § 16-15-5003(i)(3). The salary for the judge is the higher of this result or $39,305, the salary payable to a general county officer under Tenn. Code Ann. § 8-24-102 effective July 1, 2001.

3. Repealing the Private Act

Finally, the request asks whether the private act may constitutionally be repealed before a successor to the current incumbent is appointed to the office if it becomes vacant. Article VI, Section 7, of the Tennessee Constitution provides:

> 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*. They shall not be allowed any fees or perquisites of office nor hold any other office of trust or profit under this State or the United States.

(Emphasis added).

Under this provision, a statutory change in judicial salary cannot change the salary of a judge who took office *before* it becomes 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). Therefore, the repeal of the private act governing the salary of the Lake County General Sessions Judge may constitutionally apply to the salary of a successor to the current incumbent, so long as the act is repealed before the successor is appointed to fill the vacancy. Op. Tenn. Atty. Gen. 01-029 (March 5, 2001).

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