S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 12, 2006

Opinion No. 06-162

Additional compensation for clerk and master providing services for probate cases

QUESTIONS

1. Is a clerk and master eligible for additional compensation if he or she clerks for the Chancery Court and also performs clerking services with regard to probate cases?

2. Does it make a difference whether the probate case is being heard under the jurisdiction of the Chancery Court or under the jurisdiction of a general sessions court that has been granted jurisdiction over probate matters?

3. Some counties have private acts that place jurisdiction over probate matters in the Chancery Court, the General Sessions Court, or in a "Probate Court," with the cases then heard by a general sessions judge or chancellor. In these counties, does the language of the private act determine whether probate is treated as a separate court?

OPINIONS

1. Yes.

2. No.

3. Yes.

ANALYSIS

1. This opinion addresses certain circumstances under which a clerk and master may receive additional compensation for performing clerical services with respect to probate cases. The salary to be paid to general county officers, including clerks and masters of the Chancery Court, clerks of probate courts, and clerks of general sessions courts, is set forth in Tenn. Code Ann. § 8-24-102. Under subsection (b) of the statute, the salary schedule varies by county population bracket. Further, Chapter 601 of the Public Acts of 2006 ("Chapter 601") amended the statute effective May 4, 2006, to provide:

> Notwithstanding the provisions of subsection (h) to the contrary, a county legislative body may provide to a clerk of court who serves more than one (1) court in the

> county additional compensation in the amount of ten percent (10%) of such clerk's base compensation. Such increase shall be for the purpose of compensating the clerk for the additional duties and time required to serve multiple courts. *For the purposes of this section, a clerk and master shall be considered eligible for this additional compensation if the clerk serves as clerk of the court that exercises probate jurisdiction.* In order for such increase to be valid, it must be adopted by resolution of the county legislative body. For the purpose of subsection (g), above, any additional compensation provided to a general officer under any provision of this statute shall be included when determining the salary paid to the general officers of the county.

Tenn. Code Ann. § 8-24-102(j)(2) (emphasis added). Under this statute, therefore, a clerk and master is eligible for additional compensation if he or she serves a court exercising probate jurisdiction, including the Chancery Court.

2. The second question is whether it makes a difference if the clerk and master is performing clerical services with respect to a probate case being heard under the Chancery Court's jurisdiction, or under the jurisdiction of a general sessions court that has been authorized to hear probate matters. This distinction was important before the enactment of Chapter 601, because former Tenn. Code Ann. § 8-24-102(j)(2) only provided for additional compensation to "a clerk of court who serves more the one (1) court in the county . . .." Under the statute as amended, however, "a clerk and master shall be considered eligible for this additional compensation if the clerk serves as clerk of the court that exercises probate jurisdiction." Accordingly, a clerk and master is eligible for additional compensation under Tenn. Code Ann. § 8-24-102(j)(2) if the clerk is serving more than one court in the county, or if the Chancery Court for which the clerk serves exercises probate jurisdiction.

3. The third question notes that private acts in certain counties may have vested probate jurisdiction in the Chancery Court, the General Sessions Court, or in a separate "Probate Court," with the cases being heard by a general sessions judge or chancellor. The question then asks whether the language of the private act would determine whether probate is treated as a separate court. The fundamental rule of statutory construction is to ascertain the intent of the legislature, and this intent is to be ascertained primarily from the natural and ordinary meaning of the language used. *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). Accordingly, one would look to the language of the act in question to determine whether the General Assembly intended to create a separate "Probate Court," or to confer additional jurisdiction on a court already in existence.

MICHAEL E. MOORE
Acting Attorney General and Reporter

ANDY D. BENNETT
Chief Deputy Attorney General

GINA J. BARHAM
Deputy Attorney General

Requested by:

Honorable Doug Overbey
State Representative
201 War Memorial Building
Nashville, TN 37243-0120