STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

January 6, 2012

Opinion No. 12-01

State Employee Salaries

QUESTION

Do the provisions of the 2011 Appropriations Act grant discretion to the Executive Branch to include consideration of an employee's disciplinary history in withholding a pay raise to that employee?

OPINION

Yes. The interpretation of the term "work performance" to include an employee's disciplinary history in determining whether that employee is entitled to a salary increase is reasonable, particularly in light of the broad discretion the Appropriations Act of 2011 provides to the Commissioners of Human Resources and Finance and Administration to generally establish and approve State employee salary levels.

ANALYSIS

The 2011 Appropriations Act provides an "across-the-board" 1.6% salary increase for all State of Tennessee employees. See 2011 Tenn. Pub. Acts 473, § 49. This 1.6% salary increase is applicable to all state employees "unless an employee is denied on the basis of unsatisfactory work performance." Id. The Act does not define the term "work performance." The Act provides that a denial for unsatisfactory work performance "shall be set forth in a statement from the head of the department or agency detailing the circumstances surrounding the denial" and that the denied employee is allowed an opportunity to respond to the reasons for denial. Id.

The Appropriations Act further states that, with a few noted narrow exceptions,[1] all "salaries and wages in departments, institutions, offices and agencies shall be approved by the Commissioner of Human Resources, provided, however, that the establishment of salary ranges within such departments, institutions, offices and agencies shall be subject to the approval of the Commissioner of Finance and Administration." Id., at § 30.

[1] Under Section 30, the salaries of employees of the Attorney General and Reporter, Judicial Branch, Treasurer, Comptroller, Secretary of State, Fiscal Review Committee, and the Joint Legislative Services Committee are not subject to approval by the Commissioners of Human Resources and Finance and Administration. See 2011 Tenn. Pub. Acts 473, § 30.

Thus, under Section 30, all state employee salaries (outside of those few specifically excluded departments) must be approved by the Commissioners of Human Resources and Finance and Administration before they can be paid out of the appropriations made by the Act. Section 30 thereby confers very broad authority on the Commissioners and places no conditions on the Commissioners' approval or disapproval of salary levels. This authority granted under Section 30 must be read in concert with Section 49, which provides for denial of the 1.6% salary increase to employees whose work performance is unsatisfactory. *See State v Adams*, 24 S.W.3d 289, 295 (Tenn. 2000) (where two or more statutes share a common purpose, then all other statutes must be considered when construing any one of them); *Carver v. Citizens Utility Co.*, 954 S.W.2d 34, 35 (Tenn. 1997) (one goal of statutory construction is to avoid conflict and provide for a harmonious operation of the laws). In light of the wide discretion granted by Section 30 to the Commissioners of Human Resources and Finance and Administration to approve salaries and wages in various departments, it necessarily follows that the Executive Branch under Section 49 has similar discretion to determine the appropriate elements of satisfactory work performance of these same State employees for purposes of allowing a salary increase.

Disallowing salary increases for employees whose work performance, including workplace conduct, is unsatisfactory is a reasonable exercise of the broad authority afforded to the Commissioners of Human Resources and Finance and Administration under Sections 30 and 49 of the Appropriations Act. Thus, the decision by the Executive Branch to include an employee's disciplinary history as a component of unsatisfactory work conduct in disallowing salary increases for State employees does not violate either the Act or any other applicable Tennessee law, provided the Section 49 procedures for notice to affected employees are properly followed.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ADAM B. FUTRELL
Assistant Attorney General

Requested by:

The Honorable Beverly Marrero
State Senator
312 War Memorial Building
Nashville, TN 37243