

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-004

County Commissioner Compensation

QUESTION

Tenn. Code Ann. § 5-5-107 authorizes county commissions to set compensation of their members. May a county with a population of less than 150,000 adopt a resolution that would set the compensation of members at a stated monthly amount, but provide for a reduced amount of compensation to be paid to any member who receives benefits such as Social Security, so that the commissioner's other benefits are not jeopardized?

OPINION

No, the statute authorizes only uniform compensation for all members.

ANALYSIS

This opinion concerns compensation for county commissioners. Under Tenn. Code Ann. § 5-5-107, county legislative bodies are authorized to fix the compensation of their membership for attending county commission sessions and committee meetings. Subdivision (b)(1) of the statute provides the minimum amount that commissioners in counties with different populations must be paid for attending county commission sessions. The statute ranks counties from the third class to the eighth class, as classified in Tenn. Code Ann. § 8-24-101(a). Under that statute, counties having a population of 50,000 or more, but less than 150,000, are counties of the third class; counties with a population of 23,000 or more, but less than 50,000, are counties of the fourth class, and so on. This Office has concluded that subdivision (b)(1) sets a mandatory minimum salary for those counties to which it applies and that a county commissioner may not accept less than the amount set by the resolution of the county commission. Op. Tenn. Att'y Gen. 04-015 (February 5, 2004).

The question is whether the county commission could, in effect, set a sliding scale of compensation for commissioners. Commissioners who receive certain benefits, such as Social Security payments, would receive a lower amount than the other commissioners, so that a commissioner's right to receive benefits would not be jeopardized. No commissioner would receive less than the statutory amount. The statute, however, contemplates a uniform level of compensation. The statute provides:

The *amount* provided in this section, or a greater *amount* provided by resolution duly adopted by the county legislative body, shall be paid to the members for each day's attendance at meetings of the body or any duly authorized committee thereof, or a greater *amount* provided by resolution duly adopted by the county legislative body as a stated salary per month.

Tenn. Code Ann. § 5-5-107(c) (Supp. 2004) (emphasis added). We think the repeated use of the singular "amount" reflects the legislature's intent that commissioners all receive the same compensation. For this reason, the statute does not authorize the county commission to vary the compensation in the manner proposed.

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