

Opinion No. 2013-120

December 18, 2013

The Honorable David Fielding
State Representative
909 South Vine
Magnolia, Arkansas 71753-4142

Dear Representative Fielding:

This is my opinion on whether a statute that requires annual cost-of-living pay increases for “elected county officers” applies to justices of the peace.

In my opinion, justices of the peace are not “elected county officers” as that term is used in the statute.

The law provides that on each January 1 “three percent (3%) per annum [sic] shall be added to the minimum and maximum salaries and per diems of elected county officers as a cost-of-living adjustment.”¹

The law was part of an act of the General Assembly that contained three sections.² Section one amended an existing code section entitled “Compensation of elected county officers,” which expressly applies to the county judge, sheriff, collector, circuit clerk, county clerk, assessor, treasurer, coroner, and surveyor.³ Section two amended the succeeding existing code section, entitled “Compensation of township officers,” which expressly applies to justices of the peace and

¹ A.C.A. § 14-14-1210(a) (Supp. 2013).

² Act 320 of 2009.

³ A.C.A. § 14-14-1204 (Supp. 2013).

constables.⁴ Section three added the provision at issue, which refers only to “elected county officers,” not to “township officers” (or to “quorum court district officers”⁵).

Thus the General Assembly – in the same act that established the provision at issue – continued to distinguish for compensation purposes between “elected county officers” on the one hand and “township officers” on the other, and continued to include justices of the peace within the latter. In my view, those facts almost compel the conclusion that the General Assembly did not intend justices of the peace to be included within “elected county officers” in the only other section of the same act.

As you note in your request, predecessors in this office have reached the same conclusion in similar contexts.⁶ One noted that Amendment 55 excludes justices of the peace from “county officers” for compensation purposes and that the General Assembly has “consistently and meticulously differentiated between county officers, district and township officers, and county employees throughout the statutes that apply to county government. . . .”⁷

It is true, as you note, that the statute refers to cost-of-living adjustment of “per diems” as well as “salaries,” and that, of the officials who serve at the county level

⁴ A.C.A. § 14-14-1205 (Supp. 2013). The existing code sections discussed in the accompanying text were originally enacted as sections 108 and 109 of Act 742 of 1977, the County Government Code, codified at A.C.A. §§ 14-134-101 to -1313 (Repl. 1998, Supp. 2013).

⁵ Justices of the peace were township officers until the adoption of Amendment 55. *See* Ark. Const. art. 7, § 38. Since then, justices of the peace have been elected from single-member quorum court districts whose boundaries are not necessarily the same as township boundaries. *See* Ark. Const. amend. 55, § 2(a); A.C.A. § 14-14-401(a), (b) (Repl. 1998).

⁶ *See, e.g.*, Op. Att’y Gen. 2006-187 (justice of the peace not “county constitutional official” for purposes of statute requiring same to become member of state retirement system), 2003-059 (justice of the peace not “county officer” for purposes of statute delaying effective date of certain decreases in compensation of same), 99-009 (justice of the peace is generally quorum court district officer, not county officer, but is township officer for purposes of statute governing filling vacancies in “county elective offices” (filled by quorum court) and “township offices, including justice of the peace” (filled by Governor’s appointment)).

⁷ Op. Att’y Gen. 2003-059.

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of government, only justices of the peace are normally paid per diem.⁸ This usage may imply that the General Assembly intended to include justices of the peace within the term “elected county officers” in the statute at issue, but any such implication does not, in my opinion, outweigh the reasons, stated above, for which I conclude otherwise.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

⁸ See A.C.A. §§ 14-14-1204 (setting forth minimum and maximum annual salaries of specified county officers, not including justices of the peace) and 14-14-1205 (setting forth minimum per diem and maximum aggregate annual compensation of justices of the peace).