

Office Closings

The county commission is responsible for establishing and enforcing general rules and practices related to daily operation of county government. As mentioned above, the county commission establishes personnel policies and practices, which includes issues such as working hours for county employees, rules for overtime or comp time, annual and sick leave eligibility, etc. However, management extends well beyond just personnel matters.

For example, state law clearly provides that the county commission establishes the hours that the courthouse will be open to the public (*See, e.g., AG's Opinion # 92-016*) and sets holidays for all county offices (*See, Code of Alabama 1975, § 11-1-8*). These two items can be particularly problematic when other county officials attempt to alter their office practices, such as by setting hours of operation that extend beyond the hours the courthouse is open or attempting to close the office on days not specifically designated as a holiday.

- The Examiners office has repeatedly held that office personnel not working on a day that is not an official holiday shall be on annual leave. Therefore, if the tax official decides to close his or her office on December 31 when that date is not designated as a holiday, the employees in the tax office will be required to take leave – whether they want to or not.
- There may be times when court or other officials will need to use the courthouse beyond regular hours (such as a lengthy trial where testimony extends beyond courthouse hours). Arrangements must be made to ensure access to the building, make sure the lights are on, provide necessary security, etc.

Bonus or Incentive Pay/Holiday Dinners or Gifts

Section 68 of Alabama's Constitution prohibits granting any extra compensation or allowance to a public employee after services have been rendered. This provision states as follows:

The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office; nor shall any officer of the state bind the state to the payment of any sum of money but by authority of law; provided this section shall not apply to allowances made by commissioners' courts or boards of revenue to county officers for ex officio services, nor prevent the legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring, or guarding prisoners.

Regarding County Employees' Compensation

Section 68 has been interpreted to prohibit any additional compensation or benefit to a county employee after the services have already been rendered. In other words, it is not possible to "reward" an employee for exceptional work by providing an unanticipated bonus – or authorize additional pay for past special work. There are many Attorney General's Opinions on this subject. A few are set out below:

- Governmental entity cannot grant retroactive pay increase unless there was an expectation or agreement of increased payment for services. *AG's Opinion # 2000-105*.
- Section 68 prohibits county from granting employees retroactive pay increase beyond the first day of the pay period for which compensation is due. *AG's Opinion # 88-136*.

The attorney general's office held in ***AG's Opinion # 2006-153*** that a governmental entity may offer employees incentive-based compensation that permits employees to receive additional compensation if they meet certain written goals or standards of performance, provided the incentive-based compensation meets the following conditions:

- It is prospective in its application
- It is treated as a regular part of an employee's compensation,
- It is made pursuant to a written policy adopted by the governmental entity, and
- It is legal consideration offered to an employee in exchange for that employee attaining written goals or standards of performance.

See, also, ***AG's Opinion # 2012-060***, which provides that the sheriff may provide incentive compensation to deputy sheriffs and jailers, provided the incentives are based on a written policy adopted by both the county and the sheriff. The policy may be based on different terms from the incentive-compensation policy in the county's personnel policy or the sheriff may adopt the county's policy for deputy sheriffs and jailers.

- This opinion reiterates the requirement that any policy adopted by the county must state the amount of the compensation, make the compensation available to all employees, and state the consideration offered in exchange for the compensation, such as unused sick leave or maintaining safety.

Application to Other Benefits

Section 68 and Section 94 have both been consistently used as authority for the proposition that government employers cannot use public funds to provide gift certificates, awards plaques, hold appreciation dinners, and the like for county employees using public funds. Each circumstance must be considered individually, and the attorney general's office has applied the "public purpose doctrine" discussed above in some instances to authorize certain activities like providing lunch or refreshments at a working meeting, but in general, there is a strong prohibition against such practices.

Listed below is a small sampling of opinions in this regard:

- Purchase of gift certificates for employees with public funds prohibited under Section 94 and Section 68 of Alabama's Constitution. *AG's Opinion # 133.*
- A governmental entity may not purchase flowers, etc. for families of deceased employees, officials, relatives, or members of the general public with public funds. *AG's Opinion # 2001-129.*
- Governmental entity may have retirement incentive program if treated as part of employees' compensation and is made pursuant to a written, specified personnel policy. *AG's Opinion # 2002-191.*