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Opinion No. 86-218

October 28, 1986

Charles L. Robinson
Legislative Auditor
State Capitol
Little Rock, AR 72201

Dear Mr. Robinson:

This is in response to your request for an official opinion on the following questions:

1. Is a circuit or chancery clerk and/or any other individual appointed as a master or commissioner in chancery a county employee?

2. Is a master or commissioner in chancery entitled to fees as compensation, or must compensation be set by quorum court ordinance if the individual is considered a county employee?

3. Is a circuit or chancery clerk acting as ex-officio master or commissioner in chancery entitled to receive additional compensation for services provided as master or commissioner in chancery, or are such services considered duties of the office of the circuit or chancery clerk, and thereby not entitled to additional compensation?

4. If the answer to #1 is no, does Ark. Stat. Ann. §17-4208, the County Code of Ethics prevent the circuit or chancery clerk from receiving compensation as master or commissioner in chancery?

In response to your first question, for purposes of this opinion it will be assumed that the question is asked in the context of Amendment 55 to the Arkansas Constitution. Restated, therefore, the question is whether a master or commissioner in chancery is a county employee within the meaning of Amendment 55.

Although there is no case law specifically on point, the few court opinions in this gray area indicate that the answer to this question is no. In Venhaus v. State Ex. Rel. Lofton, 684 S.W.2d 252 (1985), the Supreme Court ruled that the quorum court is without discretion to set the expenses of State courts, and that the quorum court could not, therefore, establish the amount of compensation of circuit court probation officers. The Court held, in essence, that these individuals are not county employees within the meaning of Amendment 55. The Court reasoned that the quorum court has jurisdiction only over "local matters," and that the circuit court and its employees are not a local matter. 684 S.W.2d at 253. The legislative branch, according to the Court, fixes salaries under Arkansas constitutional doctrine. Id. at 255.

The case of Bahil v. Scribner, 265 Ark. 834, 581 S.W.2d 334 (1979) should also be noted in this regard. The Supreme Court held in that case that delinquent tax collectors are "county officers or employees" within the meaning of Amendment 55. The Court emphasized the "mutual relationship" between the county collector and the county clerk's office, and the following factors were determinative:

The [delinquent tax collectors] conducted their operations out of the county courthouse. The county supplied their office space and utilities. Their bonds were payable to the county. The county paid the employer's part of their social security payments, and the county paid the employer's part of their state retirement payments.

These factors would also appear to apply to the probation officers whose compensation was at issue in Venhaus v. State Ex. Rel. Lofton, supra. The Court's ruling in Venhaus implies, however, that these factors are not determinative with respect to officers or employees of the Court. Masters or commissioners in chancery would fall into this same category of officers or employers of a State court, and the Venhaus decision would support the proposition that they are not to be considered county employees within the meaning of Amendment 55.