



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 6, 2023

The Honorable Louise D. Ladner
Justice Court Judge, Harrison County
1st Judicial District
Post Office Box 1754
Gulfport, Mississippi 39502

Re: Wedding Fee for Justice Court Judges Receiving PERS Retirement

Dear Judge Ladner:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

If a justice court judge has retired as part of the PERS retirement system and receives 25% of their salary because they are still working as a justice court judge, are they entitled to the \$25 in-office fee for doing weddings as authorized in Mississippi Code Annotated Section 25-7-25(3)?

Brief Response

No. A retired justice court judge that receives 25% of his or her average compensation through the PERS retirement system due to continued work as a justice court judge is not entitled to additionally receive Section 25-7-25(3)'s \$25 fee for performing courtroom or office wedding ceremonies.

Applicable Law and Discussion

Section 25-7-25(3) provides, in part, that "each justice court judge may receive a fee of not more than Twenty-five Dollars (\$25.00) for each marriage ceremony he performs. . . ." The question arises, however, because Section 25-11-127(6) provides:

(a) A member may retire and continue in municipal or county elective office provided that the member has reached the age and/or service requirement that will not result in a prohibited in-service distribution as defined by the Internal Revenue

Service, or a retiree may be elected to a municipal or county office, provided that the person:

...

(ii) Elects to receive compensation for that elective office in an amount not to exceed twenty-five percent (25%) of the retiree's average compensation.

...

(c) As used in this subsection, the term "compensation" does not include office expense allowance, mileage or travel expense authorized by a statute of the State of Mississippi.

Although this office has not opined on the specific question presented, it has issued a similar opinion in regard to retired circuit or chancery clerks. *See* MS AG Op., *Pickering* at *1 (Aug. 20, 2008) ("It is the opinion of this office that a violation of Section 25-11-127 occurs when a retired circuit or chancery clerk receives compensation, *including fees* and disallowed expenses, in excess of twenty-five percent (25%) of the retiree's average compensation.") (Emphasis added). We reach the same conclusion here.

The only exclusion to the 25% rule set forth in Section 25-11-127 is for the reimbursement of "office expense allowance, mileage or travel expense authorized by any applicable statute of the State of Mississippi."

As stated *supra*, Section 25-7-25(3) allows a justice court judge to receive a discretionary "fee of not more than [\$25.00] for each marriage ceremony he performs in the courtroom or offices of the justice court at any time the courtroom or offices are open to the public." These fees are paid through the claims docket by the board of supervisors. MS AG Op., *Carter* at *1 (May 4, 2001).

Although this office has stated that it is unable to definitively provide what items the term "office expense allowance" encompasses, *see* MS AG Op., *McWilliams* at *1 (Nov. 25, 1998), the terms "fee" and "office expense allowance" are not synonymous. While the terms "fee" and "allowance" are not defined by the relevant statute, "[i]n the absence of a legislative definition, reference to a dictionary is proper." *City of Tchula v. Miss. Pub. Serv. Comm'n*, 187 So. 3d 597, 600 (Miss. 2016) (citing *Kerr-McGee Chem. Corp. v. Buelow*, 670 So. 3d 12, 19 (Miss. 1995)). The Merriam-Webster dictionary defines "fee" as "a fixed charge; a sum paid or charged for a service." MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/fee> (last visited Jan. 18, 2023). It defines "allowance" as "a sum granted as a reimbursement or bounty or for expenses." MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/allowance> (last visited Jan. 18, 2023). Accordingly, the \$25 fee set forth in Section 25-7-25(3) is not an office expense allowance excluded from Section 25-11-127's 25% limit.

In conclusion, it is the opinion of this office that a retired justice court judge that continues to serve in that position and receives 25% of his or her average compensation through the PERS retirement

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system is not entitled to receive Section 25-7-25(3)'s \$25 fee for performing wedding ceremonies. To do so would violate Section 25-11-127.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION