



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

November 28, 2023

Tom T. Ross, Jr., Esq.  
Attorney, Coahoma County  
Post Office Box 579  
Clarksdale, Mississippi 38614

Re: County Court Judge Salary

Dear Mr. Ross:

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

## OFFICIAL OPINION

### Background

According to your request, on February 7, 2000, the Coahoma County Board of Supervisors (“Board”) passed a resolution declaring that beginning with fiscal year 2000-2001, the salary of the Coahoma County Court Judge (“County Court Judge”) would be set at a rate of \$1,000.00 less than that provided by statute for circuit and chancery judges for the state of Mississippi. Since that time the County Court Judge was paid a salary of \$1,000.00 less than that provided by statute for circuit and chancery judges for the state of Mississippi. For the 2020-2021 budget year, the Board adopted a budget setting the County Court Judge’s salary at \$135,000.00. Effective January 1, 2021, the salary for circuit and chancery judges increased from \$136,000.00 per year to \$149,000.00 per year as required by Mississippi Code Annotated Section 25-3-35. However, the County Court Judge’s salary remained at \$135,000.00. The County Court Judge has requested that the Board pay him an amount that would be the difference between the salary he was paid in 2021 (\$135,000.00) and the amount due with the increased chancery and circuit judges’ salary of \$149,000.00.

### Question Presented

Since Section 9-9-11 gives the Board discretion over the amount of salary the County Court Judge is paid, if the Board now wishes to pay the increased salary, does the current Board have the discretion to retroactively pay the disputed amount for the year 2021?

### **Brief Response**

As long as the salary meets the statutory minimum of the applicable subsection of Section 9-9-11, the Board may not retroactively increase the salary of the County Court Judge. To do so would be a violation of Section 96 of the Mississippi Constitution, which prohibits extra compensation after services were rendered.

### **Applicable Law and Discussion**

As an initial matter, Section 9-9-11(1), which you cite in your request, provides:

*Except as otherwise provided in subsections (2), (3) and (4), the county court judge shall receive an annual salary payable monthly out of the county treasury in an amount not to exceed One Thousand Dollars (\$1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county . . . .*

(emphasis added.) However, we understand from the information provided with your request that Coahoma County fits the description in Section 9-9-11(4)(c), which provides:

The office of county judge in any such Class 1 county with a population according to the 1970 federal decennial census of greater than thirty-nine thousand (39,000), and where U.S. Highway 61 and Mississippi Highway 6 intersect, *shall receive an annual salary to be paid in monthly installments of not less than an amount equal to ninety percent (90%) of the annual salary which is now or shall hereafter be provided for circuit and chancery judges of the state*, as follows: The salary of the county judge shall be increased by ten percent (10%) annually above the base salary of the preceding year until such time as the judge's salary is equal to the amount that is provided by this subsection. The office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law.

(emphasis added.) Section 9-9-11(7) must also be considered:

Notwithstanding any provision of this section to the contrary, the board of supervisors of any county, *in its discretion*, may pay its county court judge an annual salary of One Thousand Dollars (\$1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(emphasis added.) Thus, assuming that Subsection (4)(c) does in fact describe Coahoma County, the Board has the discretion to set the County Court Judge's salary in accordance with either Subsection (4)(c) or Subsection (7).

Section 96 of the Mississippi Constitution, which is relevant to your question, reads as follows:

The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made,

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nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections.

This constitutional prohibition also applies to counties and municipalities. *Golding v. Salter*, 234 Miss. 567, 107 So. 2d 348, 356 (1958). This office has consistently opined that Section 96 of the Mississippi Constitution “strictly forbids payment of retroactive salary increases to any public employee unless such payment is clearly shown to be back pay previously due but unpaid because of administrative error.” MS AG Op., *Mosley* at \*1 (Feb. 22, 2014) (internal citations omitted). We have distinguished between “a discretionary raise that the agency could have given but, in fact did not give to the employee” and a raise mandated by statute, rule, or regulation. *Id.* at \*2. Further, an “administrative error occurs where compensation should have been mandatorily increased but the increased compensation was not paid due to oversight.” *Id.* (internal citations omitted). Your request suggests that the resolution passed in 2000 to set the County Court Judge’s salary at a rate of \$1,000.00 less than the salary for circuit and chancery judges warrants the raise in 2021. However, the resolution appears to be specific to the salary for fiscal year 2000-2001. Further, a board cannot bind a successor board to a contract unless statutorily authorized. As we understand from the facts provided with your request, the Board had the discretion to increase the County Court Judge’s salary in 2021 but did not in fact do so. To retroactively increase the salary of the County Court Judge that already met the statutory minimum would be extra compensation after services were rendered, which is prohibited by Section 96 of the Mississippi Constitution.

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/ Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General