



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

April 18, 2024

Tim C. Holleman, Esq.  
Attorney, Harrison County Board of Supervisors  
1720 23<sup>rd</sup> Avenue  
Gulfport, Mississippi 39501

Re: County Public Defender's Salary

Dear Mr. Holleman:

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

#### **Question Presented**

Based on clarification we received from you by telephone, we understand your question to be: Does the phrase "but in no event to exceed the compensation of the district attorney" set forth in Mississippi Code Annotated Section 25-32-5 apply to a full-time public defender representing one county?

#### **Brief Response**

Section 25-32-5's phrase "but in no event to exceed the compensation of the district attorney" applies to each category of full-time public defenders, i.e., "a public defender, who shall be full-time, representing an entire circuit court district . . . a public defender representing one (1) county . . . and . . . a public defender representing two (2) or more counties, but less than the entire circuit court district."

#### **Applicable Law and Discussion**

As an initial matter, to the extent this request involves any action already taken by the board of supervisors, this office cannot validate or invalidate any past action.

Section 25-32-5 provides, in relevant part:

Compensation for the public defender shall be fixed by the board of supervisors, if two (2) or more counties are acting jointly; however, the compensation for a public defender, who shall be full-time, representing an entire circuit court district shall not be less than the compensation of the district attorney, the compensation for a public defender representing one (1) county shall not be less than the compensation of the county prosecuting attorney and the compensation for a public defender

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representing two (2) or more counties, but less than the entire circuit court district, shall not be less than the aggregate of the compensation for county prosecuting attorneys of the counties served, *but in no event to exceed the compensation of the district attorney.*

(emphasis added). As stated by the Mississippi Supreme Court, “[s]tatutes must be read according to their intended purpose.” *Manning v. State*, 371 So. 3d 117, 127 (Miss. 2022).

Section 25-32-5 lays out the salary of public defenders based on the number of counties served, and each category is proportional to the salary of the corresponding prosecutor. For a public defender representing an entire multi-county circuit court district, the salary correlates to the salary of the district attorney who also represents the entire multi-county circuit court district. For a public defender who represents only one county, the salary correlates to the salary of the county prosecutor representing only that one county. Likewise, a public defender who represents two or more counties but less than an entire circuit court district has a salary that correlates to the salaries of the county prosecutors representing those two or more counties. In sum, the salaries of the public defenders and prosecuting attorneys are commensurate and proportional based on the number of counties served.

This logic is reflected in the statute’s language and structure. Compensation of the public defender is commensurate with the workload of the prosecutorial counterpart and is based on the category of representation: district to district, county to county, and counties to counties. Thus, the plain statutory purpose dictates that the final clause of the first sentence of Section 25-32-5 —“but in no event to exceed the compensation of the district attorney”— refers to and captures all of the preceding categories of public defenders. If the drafters had wanted to single out only the category immediately preceding the limiting language, they could have simply said “not to exceed” instead of “but in no event to exceed.” For the statute to retain its logical, proportional salary scheme, a public defender representing only one county cannot make more than a district attorney representing an entire multi-county circuit court district.

For these reasons, it is the opinion of this office that the phrase “but in no event to exceed the compensation of the district attorney” applies to each category of full-time public defenders, i.e., “a public defender, who shall be full-time, representing an entire circuit court district . . . a public defender representing one (1) county . . . and . . . a public defender representing two (2) or more counties, but less than the entire circuit court district.” Miss. Code Ann. § 25-32-5.

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