

OFFICE OF THE ATTORNEY GENERAL



92-00182

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

FEB 24 1992

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Honorable Doris T. Turner
Circuit Clerk and Register
Sixth Judicial Circuit
Tuscaloosa County Courthouse
Tuscaloosa, Alabama 35401

Jurors - Courts - Compensation -
Expenses

The payment for jury service provided in Code of Alabama 1975, § 12-19-210, is an expense allowance and should not be deducted from a juror's usual compensation from his employer. There does not appear to be any fee or compensation paid to a juror that may be deducted pursuant to § 12-16-8 from a juror's usual compensation.

Dear Ms. Turner:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Is the \$10.00 per day "expense allowance" provided for in § 12-19-210 a fee or compensation referred to in § 12-16-8, thus allowing an employer a deduction for that amount?
2. If not, what fee or compensation is an employer allowed to deduct under § 12-16-8?

FACTS AND ANALYSIS

Code of Alabama 1975, § 12-19-210 states:

"(a) Regular jurors, grand and petit, shall be entitled to \$10.00 expense allowance for each day's services, \$.05 for each mile traveled in going to and returning from court and ferriage and toll, to be proved by the oath of the juror before the clerk of the court. The clerk shall give each juror a certificate, stating therein the number of days he has served, the number of miles he has traveled, the amount of ferriage and toll he has paid and the amount of expense allowance to which he is entitled. The certificate shall be payable out of the state treasury." (Emphasis added.)

Code of Alabama 1975, § 12-16-8 states:

"(a) Upon receiving a summons to report for jury duty, any employee shall on the next day he is engaged in his employment exhibit the summons to his immediate superior, and the employee shall thereupon be excused from his employment for the day or days required of him in serving as a juror in any court created by the constitutions of the United States or of the state of Alabama.

"(b) Notwithstanding the excused absence provided in subsection (a) of this section, any full-time employee shall be entitled to his usual compensation received from such employment less the fee or compensation he received for serving as such juror.

"(c) It shall be the duty of all persons paying jurors their fee or compensation for services to issue to each juror a statement showing the daily fee or compensation and the total fee or compensation received by the juror." (Emphasis added.)

Honorable Doris T. Turner
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This office has previously held that the payment for jury service provided in § 12-19-210 is an expense allowance rather than a fee or compensation as those terms are used in § 12-16-8 and, therefore, is not deductible from a juror's usual compensation. Opinions to Honorable John L. Lazenby, Circuit Clerk, dated March 30, 1990 (AG No. 90-00190), and to Honorable Robert E. Albright, State Representative, dated February 23, 1979 (Quarterly Report of the Attorney General, Vol. 174, p. 28).

The rationale for this holding is set forth in the opinion to Honorable Robert E. Albright which is attached for your review. Due to the 1977 amendments to § 12-19-210, as discussed in the Albright opinion, and that these amendments remain unchanged since that time, we find no justification for altering our previous opinion. Furthermore, we are not aware of any fee or compensation paid to jurors that may be deducted pursuant to § 12-16-8 from a juror's usual compensation.


CONCLUSION

The payment for jury service provided in Code of Alabama 1975, § 12-19-210, is an expense allowance and should not be deducted from a juror's usual compensation from his employer. There does not appear to be any fee or compensation paid to a juror that may be deducted pursuant to § 12-16-8 from a juror's usual compensation.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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Attachment

Vol 174, p. 28

mented on January 16, 1977, he can collect that fee from any case which was filed before that date. Subsequently, we received your formal request for a clarification of this opinion, specifically with regard to whether or not our opinion of March 10, 1977, should include commissions as well as fees.

Code of Alabama 1975, §12-19-20(b) provides:

"In all cases filed prior to January 16, 1977, in the Circuit Court or courts abolished by Acts 1975, No.1205, all fines, costs and fees shall be assessed and distributed according to law in existence on date of filings, including monies collected on or after January 16, 1977."

It is my opinion that the Legislature intended by this provision to preserve for clerks and registers all that compensation which the clerks and registers had earned by the performance of their duties prior to January 16, 1977, but which they had not yet in fact been paid. I do not believe that it was the legislative intent to provide periodic continuous payments to clerks or registers for services which they did not in fact perform after January 16, 1977. Commissions generally are recurring payments to clerks provided as compensation for the performance of some duty, e.g., for the collection and remittance of child support payments. Of course, those clerks and registers who are now serving in such capacities and who are performing these recurring duties are compensated for that performance by their prescribed salaries.

There has been considerable confusion concerning the disposition of these commissions and I very much hope that this opinion will help to clarify this matter and that the judicious administration of the principles expressed in this opinion will be fair and equitable to all persons concerned.

Sincerely,

CHARLES A. GRADDICK
Attorney General

February 23, 1979

Honorable Robert E. Albright
State Representative

2024 Stanhope Drive, N.E.
Huntsville, Alabama 35811

Courts—Juries

The ten dollar per day payment for jury service authorized in Section 12-19-210, Code of Alabama 1975, is an expense allowance rather than a fee, and as such is not deductible from a juror's salary.

Opinion by Assistant Attorney General Breland

JANUARY

Dear Mr. Albright:

I have received your letter of February 2, 1978, which

"One of my constituents in Huntsville, Alabama, received his salary for jury duty deducted from his pay received by the State of Alabama. The employee requested you to determine if Section 12-19-210, Code of Alabama 1975, provides for straight time pay for jury duty."

It appears that the amount of the fee does not cover the expenses. The Code of Alabama 1975, §12-19-210, provides for a fee of \$5.00 for each day of jury duty rather than for

In answer to your question, the per diem payment for a juror is a fee, not an expense allowance. Section 12-19-210, Code of Alabama 1975, provides for a per diem allowance of \$10.00 per day after \$10.00 in "expense allowance" per day. The amendment to Section 12-16-8, Code of Alabama 1975, provides that the per diem payment for jury duty shall be considered an expense allowance. This section does not

It should further be noted that the amendment provides that your constituent's salary shall not be entitled to a reimbursement for jury duty.

Dear Mr. Albright:

I have received your request for an opinion from this office, dated February 2, 1978, which reads as follows:

"One of my constituents who works at Chrysler Corporation in Huntsville, Alabama recently served on jury duty and received his straight time hourly rate from Chrysler pursuant to his collective bargaining agreement. Chrysler Corporation deducted from the payment to its employee the amount received by the employee from the circuit court clerk in Madison County for jury duty which the employee had performed. The employee, who is my constituent, has asked me to write to you to determine whether, under the **Code of Alabama, Section 12-19-210**, any amount **should** have been deducted from the straight time earnings provided by the employer.

It appears that the Chrysler Corporation is taking the position that the amount provided by the circuit clerk in Madison County is a jury duty fee and is ignoring the fact that the jury duty fee does not include travel allowance or reimbursement of expenses. The question I have is whether, under **Section 12-19-210** of the **Code of Alabama**, the 'dollar expense' allowance and '5¢ for each mile traveled' are for travel allowances or expenses rather than for a fee for jury duty service."

In answer to your question, it is my opinion that the \$10.00 per diem payment for a jury duty service is an expense allowance rather than a fee. Section 12-19-210, **Code of Alabama 1975**, which provides for the per diem allowance, was amended in 1977. See Acts 1977, No. 759, p. 1299. The amendment specifically inserted the words "expense allowance" after \$10.00 in the first sentences of §12-19-210, and substituted "expense allowance" for "compensation" near the end of the second sentence, thus evidencing a clear intention by the Legislature that this payment be considered an expense allowance rather than a fee. Under Section 12-16-8, **Code of Alabama 1975**, a fee or compensation received for jury duty shall be subtracted from the employee's normal salary. This section does not, however apply to an expense allowance.

It should further be noted that subsection (b) of the 1977 amendment provides that it shall be retroactive to May 23, 1977. Thus, if your constituent served on jury duty after this date, he or she would be entitled to a reimbursement.

Sincerely,

CHARLES A. GRADDICK
Attorney General

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