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DEPARTMENT OF JUSTICE
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BATON ROUGE
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OPINION 13-0112

Sheriff Robert Buckley
President, LA Sheriffs' Association
1175 Nicholson Drive
Baton Rouge, Louisiana 70802

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. V, Sec. 31
La. R.S. 13:5521
La. R.S. 13:5636

La. R.S. 13:5521, as amended in 2007, prevents an increase in salary for sheriffs absent legislation and does not require a reduction of sheriffs' salaries below that which was paid on June 30, 2010. It is further our opinion that if a sheriff qualifies for the salary increase authorized by La. R.S. 13:5636, he is eligible to receive the increase based on the increase provided for the Orleans criminal court judges granted by the legislature.

Dear Sheriff Buckley:

On behalf of the Louisiana Sheriffs' Association, you have requested an opinion of this office regarding the salary that is payable to Louisiana Sheriffs.

Prior to 2007, La. R.S. 33:1421 provided that sheriffs were to set their own salaries, subject to a cap based on population of their respective parishes, with sheriffs in parishes with populations above 400,000 being limited to the salary payable to the judges of the Criminal District Court of Orleans Parish and sheriffs in parishes with populations below 400,000 earning \$20,000 less than the Orleans criminal court judges' salaries.

Act 422 of the 2007 Regular Session of the Louisiana Legislature ("Act 422") deleted this salary scale by amending La. R.S. 33:1421(A)(1) to provide that "the rate of annual compensation for all services required of sheriffs and ex-officio tax collectors of the various parishes, including the Civil and Criminal Sheriffs for the Parish of Orleans may only be increased by legislative act." Act 422 further provided that this substantive amendment was to become effective on July 1, 2010.

La. R.S. 33:1421 was subsequently redesignated as La. R.S. 13:5521 pursuant to Act 248 of the 2011 Regular Session of the Louisiana Legislature. The present day La. R.S. 13:5521 provides the following with respect to the compensation rate of Louisiana Sheriffs:

A.(1) The rate of annual compensation for all services required of sheriffs and ex officio tax collectors of the various parishes, including the civil and criminal sheriffs for the parish of Orleans, may only be increased by legislative act.

(2) Nothing in this Subsection shall mandate an additional appropriation by the city of New Orleans.

(3) Repealed by Acts 1995, No. 525, §2, eff. Jan. 1, 1996.

B. In addition to the above salary, each individual sheriff shall be granted ten percent of his annual compensation as an expense allowance.

C. Nothing in this Section shall be construed to limit a sheriff from participation in an eligible deferred compensation program established in accordance with 26 U.S.C. 457. A sheriff shall not authorize or receive an employer contribution that would be more favorable than that offered to the employees of the sheriff's office.

D. In addition to all other forms of compensation which are authorized for sheriffs under the provisions of this Section, effective on July 1, 1999, the annual compensation of each sheriff shall be increased by twelve thousand dollars.

E. The compensation set forth in this Section shall not be changed by amendment to this Section, or by other Act regardless of whether it amends this Section, unless notice of intention to introduce the proposal has been published on two separate days without cost to the state in the official journal for the parish wherein the office is located. If the proposal would change the compensation of all sheriffs in the state, publication shall also be made in the official journal of the state. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the amount of the change, the bill shall contain a recital that the notice has been given, and certification of such publication shall be attached to the bill.

In addition to the salary owed to sheriffs pursuant to La. R.S. 13:5521(A)(1), "each individual sheriff shall be granted ten percent of his annual compensation as an expense allowance. La. R.S. 13:5521(B). Furthermore, La. R.S. 13:5631-5636, which were enacted by Act 350 of the 2012 Regular Session of the Louisiana Legislature to establish the Louisiana Sheriff's Executive Management Institute, provide that a sheriff would also be eligible to receive a salary increase "up to the amount he is eligible to receive as provided for in this Section" if he completes the training requirements provided for in La. R.S. 13:5631-5636 and if "the legislature has established a salary increase for, and appropriated funds for, salary increases for district court judges as provided by law." La. R.S. 13:5636(A).

In light of the background explained above, you have asked our office whether the current sheriff's salary structure is that which existed on June 30, 2010, and whether

and to what extent a sheriff may be eligible for a salary increase based on an increase in the salaries of Orleans criminal court judges granted by the legislature.

It is our understanding based on documentation you have provided to our office, that the salaries paid to sheriffs on June 30, 2010, represent the last increase in a sheriff's salary which was tied to a raise granted to the judges of the Criminal District Court of Orleans Parish. It is also our understanding that there have been no legislative acts to increase a sheriff's salary since that time. Therefore, if a sheriff is still in the same term of office as he was in 2010, his salary is frozen at that level and cannot be reduced during his term of office. See La. Const. art. V, Sec. 31, which provides that "[t]he salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during the term of his office." The protection against reduction in salary these public officials are constitutionally entitled to begin when the official qualified and was elected to office and not on the date the public official takes office. See *Avoyelles Parish Justice of the Peace, et al. v. Avoyelles Parish Police Jury*, 98-543 (La.App. 3 Cir. 6/23/99), 758 So. 2d 161, 167-168.

In response to your second question regarding whether and to what extent a sheriff may be eligible for a salary increase based on an increase in the salaries of Orleans criminal court judges granted by the legislature, we find it necessary to refer to the rules of statutory construction. La. C.C. art. 13 requires that laws on the same subject matter must be interpreted in reference to each other. When two laws relating to the same subject matter exist, there is a presumption that the new law relating to particular subject-matter was enacted with reference to former general law. *Ryan v. Blount Bros. Const., Inc.*, 40,845 (La.App. 2 Cir. 4/19/06), 927 So.2d 1242, 1259. Finally, it is "a well-settled canon of statutory construction that the more specific statute controls over the general statute." *State v. Sharp*, 05-1046 (La.App. 1 Cir. 6/28/06), 939 So. 2d 418, 421.

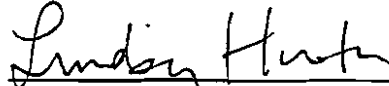
The two laws we must consider *in pari materia* to answer your question are La. R.S. 13:5521(A)(1), which was amended by Act 248 and provides that the annual compensation due to sheriffs "may only be increased by legislative act" and La. R.S. 13:5636, enacted in 2012, which provides that the sheriff may receive a salary increase if he completes the training requirements provided for in La. R.S. 13:5631-5636 and if "the legislature has established a salary increase for, and appropriated funds for, salary increases for district court judges as provided by law." La. R.S. 13:5636(A). We must presume that the legislature was aware of the amendments made in 2007 to La. R.S. 13:5521(A)(1) when it enacted La. R.S. 13:5636 and thereby allowed sheriffs to receive a pay increase upon completing certain training requirements, if the same salary increase was permitted for district court judges by law. This pay raise is separate from and in addition to a pay increase that would be granted for sheriffs by legislative act pursuant to La. R.S. 13:5521(A)(1).

In conclusion, it is the opinion of this office that La. R.S. 13:5521, as amended in 2007, but effective July 1, 2010, prevents an increase in salary for sheriffs absent legislation and freezes the sheriffs' salaries to that level which was paid on June 30, 2010. It is further our opinion that if a sheriff qualifies for a salary increase authorized by La. R.S. 13:5636, he is eligible to receive the increase based on the increase provided for the Orleans criminal court judges granted by the legislature.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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