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Opinion 24-0075

Sheriff Doug Hebert
President, Louisiana Sheriff's Association
1175 Nicholson Drive
Baton Rouge, Louisiana 70802

3 Appropriations
107 Sheriffs

La. R.S. 13:5521
La. R.S. 13:5356
Act No. 775 Regular Session 2024

Act 775 of 2024 provides for a salary increase for sheriffs by operation of law corresponding to the "stipend" in favor of the judiciary provided in the Act.

Dear Sheriff Hebert:

You ask whether the enactment of Section Act 755 of the 2024 Regular Legislative Session, providing a one-time stipend for the judiciary, triggers a statutory salary increase for Sheriffs by operation of La. R.S.13:5636, and if so, when the salary increase can be budgeted.

Legislative History:

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

The legislature changed that scheme in 2007. Act 422 of the 2007 Regular Session of the Louisiana Legislature 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."

In 2011, La. R.S. 33:1421 was redesignated as La. R.S. 13:5521 and further amended. The new version of La. R.S. 13:5521 provided, in pertinent part, for (1) a ten percent of annual compensation expense allowance, and (2) an annual increase of \$12,000, and (3) that compensation due sheriffs may only be increased by legislative act.

In 2012, the Legislature added more. La. R.S. 13:5631 through 5636, enacted by Act 350 of the 2012 Regular Session established the Louisiana Sheriff's Executive Management

Management Institute and provided that sheriffs 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 through 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.” See, La. R.S. 13:5636(A).

Our Opinion No. 13-0112 reconciled La. R.S. 13:5521 and La. R.S. 13:5631-5636 concluding that sheriffs are allowed to receive a pay increase upon completing certain training requirements, if “the legislature has established a salary increase for, *and appropriated funds for*, salary increases for district court judges as provided by law.” This salary increase would be separate from and in addition to any pay increase granted to sheriffs by legislative act pursuant to La. R.S. 13:5221(A)(1).

2024 La. Acts 775:

Against that background, the Legislature recently enacted Act 775 (HB 781) in the 2024 Regular Legislative Session. Act 775 is the annual appropriation bill for the Judicial Branch of state government. Among many specific appropriations contained in Act 775 (many of which are for salaries), Section 6A (page 10, Lines 13-24) provides for a “one-time stipend” for judges in varying amounts depending on whether they are supreme court justices, appeal court judges, district court judges, or city/parish court judges. The funding for the stipend is permitted to be paid from “the approved bank account of the judiciary based on its balance as of June 30, 2024.” See Lines 23-24.¹ Section 6.C. provides that the stipend becomes effective “following the completion of a work point study of the appellate and district courts with the National Center for State Courts and the submission of a report to the Louisiana Supreme Court and the Judicial Structure Task Force.” The limitation contained in Section 6.C., however, was *vetoed* by the Governor pursuant to a Veto Message dated June 24, 2024.² Section 6.D. further provides that this Section “shall not be funded by a specific appropriation of the Louisiana Legislature, and as such shall not be considered compensation pursuant to Article V, Section 21 of the Louisiana Constitution.” These provisions are not a model of clarity in legislative drafting, however, the appropriation appears to clearly provide for a one-time stipend for judges to be funded from funds remaining in the judicial bank account at the end of FY 24, which is composed of previously-appropriated accumulated and no longer encumbered funds that the legislature is allowing to be

¹ Section 2.B permits the funds appropriated to the Judiciary to be deposited in an approved bank selected by the supreme court. Section 2.C. provides that previously appropriated funds and other revenue of the judiciary or its agencies and interest may be rolled over (“are hereby appropriated”) and may be used to defray expenses of the judiciary, but funds remaining and unencumbered are returnable to the State General Fund “on or before September 1, 2025.” This language is not directly relevant to the current opinion, but explains the “approved bank” language in Section 6.

² This opinion does not address the effect of the veto, which has no impact on the issue presented.

carried over into FY 25 for this specific purpose without the necessity of making a specific appropriation that would amount to a permanent pay increase for judges.³

Sheriffs' Salaries

Against this backdrop and context, the Legislature added subsection **6.E.**, which states:

E. Any salary increase pursuant to R.S. 13:5636 that occurs by operation of law shall be considered a salary increase for purposes of Article V, Section 31 of the Constitution of Louisiana.

As stated above, La. R.S. 5636, titled "Salary option," says a sheriff is eligible to receive a salary increase if s/he has completed certain training requirements and "the legislature has established a salary increase for, and appropriated funds for, salary increases for district court judges as provided by law." And La. Const. Article V, section 31 states "[t]he salary . . . of [a] sheriff . . . shall not be diminished during his term in office."

Like its predecessor provisions, this provision is not a model of drafting clarity. However, it is clear the legislature intended to treat sheriffs differently than judges relative to the increase because the provision both exists, immediately follows its predecessor limitations on the judicial stipend, and specifically invokes the provision regarding sheriffs' salary increases. The appropriation for the stipend while not appropriating new funds, nevertheless meets the definition of "appropriation" because it permits the continued carry-over and use of previously appropriated funds.⁴

This provision has no place in this appropriations bill unless the Legislature intended to make sheriffs eligible for an increase in salary in the amount that is provided to the judiciary in the stipend provision. While the result of our interpretation is that the appropriation to the judiciary is not a permanent salary increase triggering constitutional restrictions on reduction in salary, it nevertheless does count as a matter of law as an increase triggering the operation of La. R.S. 13:5636, permitting an increase in salaries for Sheriffs. It is worth noting that the actual funds for Sheriffs salaries do not come

³ The legislature appears to have intended to grant a *one-time stipend* but not effect a permanent salary increase for the *judiciary* that would require continuous funding annually due to the effect of La. Const. Art. V, section 21, which states "[t]he . . . compensation of a judge shall not be decreased during the term for which he is elected."

⁴ See La. R.S. 39:2(3) defining an appropriation as "an authorization by the legislature to a budget unit for a program to expend from public funds a sum of money, for purposes of designated, under the procedure prescribed in this Chapter." La. Const. Article VII, section 10(D) states "[e]xcept as otherwise provided in this constitution, money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with law."

from the Legislature therefore the effect of the language in subsection 6.E. is simply to permit an increase funded by local political subdivisions to pay their Sheriff. The provision in subsection 6.E. on sheriff raises cannot be read as mere surplusage in the Act. *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 2003-0360 (La. 12/3/03), 860 So. 2d 1112, 1116. It is presumed that every word, sentence, or provision was intended to serve some useful purpose and that some effect is to be given to each such provision. *Luv N' Care, Ltd. v. Jackel Int'l Ltd.*, 2019-0749 (La. 1/29/20), 347 So. 3d 572, 577.

It may seem inconsistent for the legislature in the same act to treat the appropriation to the judiciary as a one-time stipend so as to avoid binding itself and the state treasury to a permanent pay increase for judges while simultaneously treating the increase as a salary increase for purposes of La. R.S. 13:5636. However the apparent inconsistency is easily reconciled by the application of ordinary precepts of statutory interpretation. Nothing in the state constitution *prohibits* the legislature from treating the judges and sheriffs differently. Indeed Act 775, to the extent it conflicts with language in 13:5636, effectively amends it for this fiscal year (not permanently), thereby granting sheriffs permission for an increase their salaries by the amount permitted as a stipend for district court judges.

Conclusion

In summary, you asked whether 2024 La. Acts 775 permits a pay raise for sheriffs pursuant to La. R.S. 5636. We have concluded that it does. We trust that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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