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ATTORNEY GENERAL

December 21, 2015

Alan L. Berry, Jr.  
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P.O. Box 305  
Latta, SC 29565-0305

Dear Mr. Berry:

We are in receipt of your opinion request concerning the interpretation of Section 8-21-765(B) of the South Carolina Code. Specifically you ask “whether S.C. Code Ann. § 8-21-765 entitles a Dillon County probate judge, who is paid more than the base salary, to the same cost-of-living increase afforded to state employees last fiscal year.” Our response follows.

## I. Law

As mentioned in your letter, Section 8-21-765 of the South Carolina Code addresses the salary schedules of South Carolina’s probate judges. In particular, subsection (A) of the statute explains “the office of probate judge is based on a salary schedule which uses base salaries determined by population categories according to the latest official United States Decennial Census.” S.C. Code Ann. § 8-21-765(A) (1986). Continuing, the statute, via subsection (B) adds that South Carolina Court Administration monitors compliance “with this section” and further states “[n]othing contained in this section may be construed as prohibiting a county from paying in excess of the minimum base salaries provided for in this section.” S.C. Code Ann. § 8-21-765(B) (1986). Additionally, and perhaps most pertinent to your question, subsection (B) addresses cost of living increases stating such an increase, “must be paid by the county in the amount provided classified state employees in the annual state general appropriations act of the previous fiscal year” adding, “[t]he *base salaries* provided for in this Part must be adjusted annually based on the percentage amount of the cost of living increase paid to classified state employees in the annual state general appropriations act of the previous fiscal year.” S.C. Code Ann. § 8-21-765(B) (emphasis added).

## II. Analysis

Understanding the terms of Section 8-21-765, we now return to your question—whether probate judges paid in excess of the base salary schedules established in Section 8-21-765(A) are entitled to a cost of living increase under Section 8-21-765(B)’s cost of living increase language. As explained below, we believe they are not.

At its core, your question is one of statutory construction; particularly, whether Section 8-21-765(B)'s cost of living language mandates that all probate judges receive cost of living increases, or in the alternative, whether such language applies only to probate judges receiving the base salary established in subsection (A) of Section 8-21-765. For instance, one could argue the phrase "[a] cost of living increase must be paid by the county in the amount provided classified state employees in . . . the appropriations act" merely answers the questions of: (1) who pays for cost of living increases and: (2) in what amount. However, it could also be argued such language addresses not only the questions of: (1) who pays for cost of living increases; and (2) in what amount; but also addresses a third question: (3) to whom are the increases paid. With this in mind, we must now turn to the canons of statutory construction.

"The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute's language as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) ("In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole."). This is because "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent." 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007).

Applying these concepts, we believe the better understanding of Section 8-21-765(B)'s cost of living language is that the phrase "a cost of living increase must be paid by the county in the amount provided classified state employees in . . . the appropriations act," was intended to simply answer: (1) who must pay a cost of living increase; and (2) in what amount; but was not intended to address the third question of who is entitled to such an increase. Stated differently, Section 8-21-765(B)'s language concerning cost of living increases should not be understood as mandating counties to provide all probate judges with a cost of living increase in the amount provided to state employees whenever the appropriations act provides for a cost of living increase, but should instead be read according to its plain meaning—that: (1) the county is the entity responsible for paying cost of living increases; and (2) the amount a county must pay is determined by the appropriations act. Indeed, had the Legislature intended cost of living increases to apply to all probate judge salaries, it could have done so by express language rather than implication. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to

statutory construction that, “to express or include one thing implies the exclusion of another or the alternative.”). We find this omission indicative of the statute’s legislative intent.

Moreover, were we to conclude otherwise, doing so would actually render Section 8-21-765(B)’s second sentence concerning cost of living increases superfluous and therefore inconsistent with the plain meaning of the statute. See Harris, 391 S.C. at 154, 705 S.E.2d at 55 (holding appellate courts must look to the plain meaning of words used in a statute when ascertaining a statute’s legislative intent). For example, if we construed Section 8-21-765(B)’s first sentence as applying to all probate judge salaries then there would be no need for the Legislature to direct how base salaries should be increased in the second sentence—they would be increased in the manner directed by the appropriations act. However, reading Section 8-21-765(B)’s first cost of living sentence consistent with its plain meaning—that it only addresses: (1) who pays cost of living increases; and (2) in what amount—leads to the conclusion that a second sentence is needed in order to address the questions of: (3) to which salaries does the cost of living increase apply; and (4) how should it be applied. Thus, because Section 8-21-765(B)’s second cost of living sentence clearly and unambiguously addresses these questions—cost of living increases only apply to “base salaries” and must be annually adjusted on the percentage of the amount of the cost of living increase—we believe Section 8-21-765(B)’s cost of living increase language, when read as a whole, is best understood as applying only to base salaries rather all salaries.<sup>1</sup>

Additionally, our construction of Section 8-21-765(B)’s cost of living increase language is also in accord with our prior opinions on this matter. In fact, in a December 13, 1990 opinion this Office, discussing Section 8-21-765(B)’s final paragraph concerning cost of living increases, explained that where a county population rises to the next level as specified in subsection (A), “the base salaries for probate judges . . . would be the amount as it has been adjusted for cost of living increases since Section 8-21-765 was implemented.” Op. S.C. Att’y Gen., 1990 WL 599366 (December 13, 1990). Continuing, we added “[o]f course, a county council could establish a higher salary if it wished[.]” Op. S.C. Att’y Gen., 1990 WL 599366 (December 13, 1990). This was also reinforced in a March 28, 1991 opinion. In that opinion, we discussed the effective date for cost of living increases and added that the adjustment was confined to base salaries rather than all salaries. Op. S.C. Att’y Gen., 1991 WL 632984 (March 28, 1991). Similarly, in 2007, this Office, interpreting the identical cost of living increase language from the magistrate base salary statute, Section 22-8-40(E), found such language did not require a cost of living increase.<sup>2</sup> Op. S.C. Att’y Gen., 2007 WL 1031441 (March 2, 2007). In other words, our

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<sup>1</sup> Furthermore, our understanding of Section 8-21-765(B)’s cost of living increase language is also consistent with the structure of the statute as a whole. In particular, and as mentioned above, Section 8-21-765(A) largely addresses base salaries as determined by population, while Section 8-21-765(B) largely addresses cost of living increases to base salaries; a fact confirmed by the January 20, 2015 Court Administration Memorandum you have attached to your request.

<sup>2</sup> Despite our 2007 conclusion that Section 22-8-40(E)’s identical language did not entitle a magistrate to a cost of living increase, we did ultimately conclude magistrates were entitled to a cost of living increase under a different

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prior opinions confirm our conclusion today that cost of living increases apply only to base salaries and not to salaries in excess of the base salary. Of course, and as we have instructed previously, this does not prohibit county council from providing a probate judge making more than the base salary with a cost of living adjustment, but instead merely clarifies that doing so is not required by the terms of the statute.

### III. Conclusion

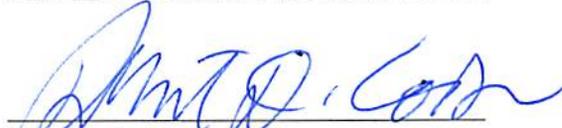
In conclusion, it is the opinion of this Office that Section 8-21-765(B)'s cost of living increase language applies only to base salaries rather than salaries that are in excess of the base salary. As a result, probate judges whose salaries are in excess of the base salary are not *entitled* to a cost of living increase pursuant to the terms of Section 8-21-765(B), but may receive one if their respective counties so decide.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General