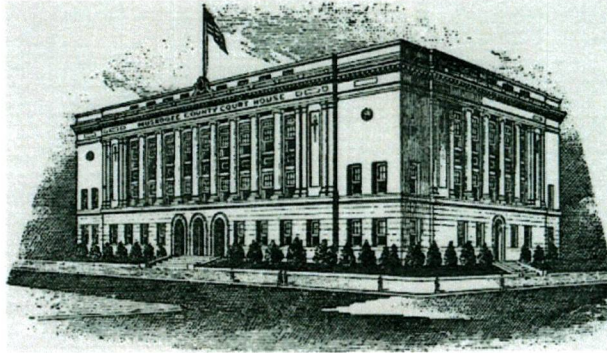


KEN DOKE
MUSKOGEE CO. DISTRICT 1

KEITH HYSLOP
MUSKOGEE CO. DISTRICT 2

KENNY PAYNE
MUSKOGEE CO. DISTRICT 3



POLLY IRVING
COUNTY CLERK



SHEILA SHAMBLIN
BOCC Executive Assistant

MUSKOGEE BOARD OF COUNTY COMMISSIONERS

P.O. BOX 2307 MUSKOGEE, OK 74402-2307 * PHONE (918)682-9601 * FAX (918) 684-1697

Email: bocc@readymuskogee.org - Website: www.muskogeecountygov.com

RESOLUTION NO. 2024-08

SUBJECT: County Sherriff Salary

WHEREAS, the County Salary Act (19 OS § 180.58 *et seq.*) provides a uniform schedule for the salaries and wages of all county officers and their deputies.

WHEREAS, it is the responsibility of the Board of County Commissioners to set the salaries for all elected county officials within the limits prescribed by County Salary Act (19 OS § 180.62(B)).

WHEREAS, 19 OS § 180.62(A) establishes the basic salary of all county officers, including the County Sheriff.

WHEREAS, the Legislature adopted HB 2914 (2024 OSL 394) which amended the County Salary Act to allow for an increase in the basic salary of the County Sheriff.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MUSKOGEE COUNTY AS FOLLOWS:

SECTION 1. POLICY. The basic salary of the County Sherriff established under 19 OS § 180.62(A) is hereby set at **\$73,425.00** per annum for the term beginning January 2025. Such basic salary shall be in addition to the serviceability factor prescribed by 19 OS § 180.63. While the Board of County Commissioners recognizes the serviceability factor is subject to routine change, as of the date of this Resolution, the serviceability factor provides a **\$19,575.00** per annum increase to the aforementioned basic salary. Accordingly, it is the intent of the Board of County Commissioners that the total gross salary of the County Sheriff for the term beginning January 2025 shall be **\$93,000.00** per annum until such time as the serviceability factor is adjusted as provided for by law, PROVIDED, any adjustment to the serviceability factor shall not operate to reduce the total gross salary above described for the duration of the County Sheriff's term beginning January 2025. Such total gross salary shall be paid out of funds available to the Sheriff's Office and shall be paid in accordance with the County's then prevailing payroll schedule.

SECTION 2. IMPLEMENTATION. All departments, officers, and employees of the county government shall take all appropriate measures within their authority to implement this resolution. Nothing in this resolution shall be construed to impair or otherwise affect the authority granted by law to a county department or officer. This resolution shall be implemented consistent with applicable law and subject to the availability of appropriations. This resolution is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the county, its departments, officers, employees, or agents, or any other person.

SECTION 3. REPEALER. All other resolutions and parts of other resolutions inconsistent or conflicting with any part of this resolution are hereby repealed to the extent of such inconsistency or conflict.

SECTION 4. SEVERABILITY. If any provision, paragraph, word, section of article of this resolution is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

SECTION 5. EFFECTIVE DATE. This resolution shall take effect immediately upon execution and shall remain in effect until amended or repealed.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF MUSKOGEE COUNTY THIS 23 DAY OF Dec, 2024.



Ken Doke, Commissioner – District 1



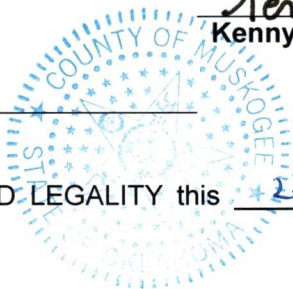
Keith Hyslop, Commissioner – District 2



Kenny Payne, Commissioner – District 3

ATTEST:


Polly Irving, County Clerk



APPROVED AS TO FORM AND LEGALITY this 23 day of Dec, 2024.



John Tyler Hammons, General Counsel



OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

December 18, 2024

Via email

The Honorable Christopher Boring
District Attorney for the Twenty-Sixth District
1600 Main St., Ste. 5
Woodward, OK 73801
Christopher.Boring@dac.state.ok.us

Re: Attorney General Opinion Request – Internal Tracking No. AGO24-52

Dear District Attorney Boring:

The office is responding to your email requesting an official Attorney General Opinion in which you ask, in effect, the following questions:

- (1) Whether a county's receipt of grant funds awarded in accordance with the Oklahoma Sheriff's Funding Assistance Grant Program Act of 2024 ("Act" or "Program"), 74 O.S.Supp.2024, § 20k-1A, requires an increase to the county sheriff's salary?
- (2) Whether amendments in House Bill 2914, 2024 Okla. Sess. Laws ch. 394, §§ 4 and 5 (codified at 19 O.S.Supp.2024, §§ 180.43 and 180.65), require a county to increase a sheriff's salary in order to authorize salary increases for deputies and staff to ensure that deputies and staff do not receive a higher salary than the sheriff?
- (3) Whether amendments in House Bill 2914, 2024 Okla. Sess. Laws ch. 394, §§ 4 and 5 (codified at 19 O.S.Supp.2024, §§ 180.43 and 180.65), permit a county to use grant funds awarded by Sheriff's Funding Assistance Grant Program to supplant existing funds in the Sheriff's Service Fee Account ("Sheriff's Fee Account")?
- (4) Whether a sheriff sworn into office after the effective date of House Bill 2914, July 1, 2024, but prior the start of the new term on January 1, 2025, is entitled to receive the increase in salary required by House Bill 2914, 2024 Okla. Sess. Laws ch. 394, § 3 (codified at 19 O.S.Supp.2024, § 180.62(A))? If so, then is the sheriff entitled to back pay from the date of swearing in?

Due to the urgent nature of your request, we are moving forward with a letter of counsel to more quickly address your questions. As a result, the analysis set forth in this letter does not constitute an official Attorney General Opinion.

I. Short Answers

- (1) No. Because the Act prohibits the payment of salary with grant funds, a county's award of funds from the Program is not contingent on any increase in the sheriff's salary. Further, the Act includes no requirement on sheriff's offices to use the grant funds to increase their sheriff's salary.
- (2) No, not necessarily. The Act does not require a sheriff's salary to be increased as a result of increases to deputy and staff salaries. As stated directly above, the Act prohibits grant funds from being used for salaries. Any increases to deputy and staff salaries that exceed the sheriff's salary violates title 19, § 180.65 of the Oklahoma Statutes. Yet, a stipend payment increasing a deputy sheriff's total compensation to an amount that exceeds the sheriff's salary does not violate section 180.65, as amended. A stipend payment does not constitute a part of the deputy or staff's salary.
- (3) No. The Act prohibits the supplanting of, or the replacement or substitution for, existing funds. 74 O.S.Supp.2024 § 20k-1A(F).
- (4) Yes, conditionally. Article XXIII, section 10 of the Oklahoma Constitution prohibits any increase to a public official's salary or emoluments after his or her election, appointment, or during his or her term of office. The only exception to this rule applies when the salary is changed by operation of law *enacted prior to* such election or appointment.

Subject to two conditions explained below, any new sheriff who assumed office after May 30, 2024, would be eligible for back pay if he or she did not receive the new minimum salary mandated under House Bill 2914, 2024 Okla. Sess. Laws ch. 394, § 3 (codified at 19 O.S.Supp.2024, § 180.62(A)). First, any sheriff who started after May 30, 2024, but before July 1, 2024, would not receive the new minimum salary until July 1, 2024. Second, the sheriff would only be eligible for back pay from his or her start (swearing-in) date, but no earlier than July 1, 2024, forward.

II. Background

In 2024, the Legislature enacted House Bill 2914, containing five substantive sections. Sections one and two relate to the Program. 70 O.S.Supp.2024, §§ 20k-1A, 20k-1B. Section one directed this office to establish and administer the Program to support the state's purpose of ensuring professional law enforcement by providing financial assistance to sheriff's offices. *Id.* § 20k-1A. Counties must use funds for the "lawful operation of the sheriff's office" but cannot use them for salary payment. *Id.* Section two establishes the Oklahoma Sheriff's Office Funding Assistance Revolving Fund. *Id.* § 20k-1B; *see also* Senate Bill 1125, 2024 Okla. Sess. Laws ch. 379, § 145 (Legislature appropriating \$18,000,000.00 to the Fund). As directed by the Act, this office distributed monies accruing to the Fund as grants to counties in established amounts that vary across three tiers based on the gross assessed total tangible property valuation of the applying county. 70 O.S.Supp.2024, § 20k-1A. Sections three through five amended provisions of law *unrelated* to the Program but relevant to compensation and financial administration of sheriff's offices.

Across Oklahoma's seventy-seven counties, county officials are faithfully attempting to implement these legislative changes. You have asked for assistance analyzing the interplay of these

statutes. Therefore, this office answers your questions below to ensure uniformity in implementing House Bill 2914 and to provide guidance to state and local officers.

III. Analysis

A. The Act prohibits a county from using Program funds to pay the sheriff's salary. Therefore, the Act does not require a county to use Program funds to increase the sheriff's salary.

Your first question asks whether a county must increase the sheriff's salary as a condition of receiving a grant under the Program. For two reasons, there is no requirement to increase a county sheriff's salary as a condition of receiving a grant under the Program. First, the Program prohibits a county from using grant funds to pay salaries. 70 O.S.Supp.2024, §20k-1A(E) (“[Program] proceeds shall not be used for the payment of salary”). Second, there is no provision in the Program or the Salary Act requiring a county to increase the sheriff's salary as a condition of receiving a grant, and this office does not read into the law that which is not there. *Kentucky Fried Chicken v. Snell*, 2014 OK 35, 345 P.3d 351.¹ Therefore, there is no connection between receiving the grant funds pursuant to the Program and increasing the sheriff's salary.

B. A stipend payment increasing a deputy sheriff's total *compensation* to an amount that exceeds the sheriff's *salary* does not violate the provisions of title 19, section 180.65 of the Oklahoma Statutes.

Longstanding Oklahoma law prohibits a deputy, as defined by 19 O.S.2021, § 161, from receiving a salary exceeding that of his or her principal officer. 19 O.S.Supp.2024 § 180.65. Your second question then asks whether House Bill 2914, which authorizes additional remuneration for deputies and other staff, requires increasing the county sheriff's salary to avoid a conflict with section 161. Therefore, the question's resolution depends on what “salary” means.

The fundamental rule of statutory construction is “to ascertain and give effect to the legislative intent, and that intent is first sought in the language of a statute.” *Fanning v. Brown*, 2004 OK 7, ¶ 10, 85 P.3d 841, 845. “The words of a statute will be given their plain and ordinary meaning unless it is contrary to the purpose and intent of the statute when considered as a whole.” *Welch v. Crow*, 2009 OK 20, ¶ 10, 206 P.3d 599, 603. Even more, Oklahoma law dictates that “[w]ords used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears.” 25 O.S.2021, § 1. Also, the Oklahoma Supreme Court “has relied on

¹ You also ask whether section 5 of House Bill 2914, which amended title 19, section 180.65 of the Oklahoma Statutes, allowing a sheriff's office to use grant funds to make additional salary payments. The relevant language amending section 180.65 pertains to the number and compensation to deputies and other staff and provides that “nothing in this section shall be interpreted to prohibit additional salary payments or stipends paid from the [Sheriff's Fee Account].” Plainly, this means that nothing in section 180.65 prohibits additional salary payments or stipends from the Sheriff's Fee Account. However, the language relating to the Program in title 74, section 20k-1A is equally clear: grant funds “shall not be used for the payment of salary.” Accordingly, the 2024 amendments to title 19, section 180.65 do not authorize grant funds to be used for additional salary payments. Also, section 4 of House Bill 2914 notably removed the restriction on sheriff's offices permitting them to only expend *surplus* in the Sheriff's Fee Account “for administering expenses for salaries, training, equipment or travel.” 19 O.S.Supp.2024, § 180.43(A). Now, sheriff's offices can use *funds* in the Sheriff's Fee Account. *Id.*

dictionary definitions to provide the plain, ordinary meaning of terms.” *Brassfield v. State*, 2024 OK 9, ¶ 8, 544 P.3d 938, 941. Nothing in House Bill 2914 defines terms such as “salary” or “stipend.” As a result, the absence of any specific definition requires the words to be understood by their ordinary meanings.²

Merriam-Webster dictionary defines “salary” as compensation paid regularly.³ Additionally, a “stipend” is “money paid periodically.”⁴ The two terms are distinguishable, and title 19, section 180.65, as amended, applies only to salaries. Accordingly, compensation that is periodically paid, such as a stipend, is not subject to the salary limits for deputies under section 180.65.⁵ As long as the deputy’s salary is below the sheriff’s salary, section 180.65 is not violated if a deputy earns more than the sheriff due to a deputy receiving an additional stipend.

C. Until the completion of the fiscal year ending June 30, 2026, no county shall reduce or supplant existing funding to a county sheriff’s office as a result of receiving grant funds under the Act.

The Program expressly prevents a county from supplanting existing funding due to receiving grant funds. 74 O.S.Supp.2024, § 20k-1A(F). Neither the Program nor other provisions of title 19 define “supplant.” However, the term is generally understood to be the act of replacing or substituting one thing with another.⁶ In the context of funding, it means using new funds to replace existing funds rather than adding to them. *See, e.g.* 28 C.F.R. § 94.108 and 34 C.F.R. § 222.174. Accordingly, a county must not use grant funds to replace existing funds or programs. For example, if a county currently funds mental health services in the county jail, then the county may not use grant funds to replace the existing financial commitment for those services. Instead, the county may *supplement* its existing funding by increasing the current financial commitment with grant funds or implement new or additional mental health services in the county jail.

With the prohibition on supplanting firmly in place, sheriff’s offices may look to other pathways to supplement or otherwise pay stipends or salaries. Section 5 of House Bill 2914 provides them such pathway. 19 O.S.Supp.2024, § 180.65. In pertinent part, the amendment to section 180.65 reads, “Nothing in this section shall be interpreted to prohibit additional salary payments or stipends paid from the Sheriff’s Service Fee Account.” 19 O.S.Supp.2024, § 180.65.

² Additionally, the definition of any word in law is applicable to other instances in which the same word appears unless “a contrary intention plainly appears.” 25 O.S.2021, § 2. A review of the Oklahoma Statutes results in no general definitions for either “salary” or “stipend.”

³ *Salary*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/salary> (last visited Dec. 16, 2024).

⁴ *Stipend*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/stipend> (last visited Dec. 16, 2024).

⁵ In further support, the Legislature distinguishes the two terms within section 180.65. *See* 19 O.S.Supp. 2024 § 180.65(A) (“...nothing in this section shall be interpreted to prohibit additional *salary or stipends* paid from the Sheriff’s Service Fee Account.”). For additional discussion regarding “salary” and similar, but distinguishable terms, *see* 1999 OK AG 1; 2000 OK AG 63; and 2002 OK AG 18.

⁶ *Supplant*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/supplant> (last visited Dec. 16, 2024).

Thus, sheriffs may utilize the Sheriff's Fee Account to pay salaries, even though the Legislature forbids them from using grant funds from the Program for that purpose.

D. Under article XXIII, section 10 of the Oklahoma Constitution, a county sheriff may receive an increase in salary if the law increasing the salary was enacted prior to the sheriff's election.

Effective July 1, 2024, House Bill 2914 amended the Salary Act, in part adding a salary range for the sheriff.⁷ House Bill 2914, Section 3 (amending the provisions of 19 O.S.Supp.2024, § 180.62). In effect, the amendments: (1) removed the sheriff's salary from that applicable to other county officers (ranging from \$19,000 to \$49,500); (2) required the sheriff's salary to be no less than the other county officers; and (3) established the sheriff's salary range at a minimum of \$44,000 and a maximum of \$74,500. *Id.* Considering these amendments, your final question asks whether a sheriff sworn into office after the effective date of House Bill 2914 is entitled to receive the salary increase provided therein. Your question implicates article XXIII, section 10 of the Oklahoma Constitution, which provides:

Except wherein otherwise provided in this Constitution, in no case shall the salary or emoluments of any public official be changed *after his election* or appointment, or during his term of office, *unless by operation of law enacted prior to such election* or appointment; nor shall the term of any public official be extended beyond the period for which he was elected or appointed: Provided, That all officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

OKLA. CONST. art. XXIII, § 10 (emphasis added).

Article XXIII, section 10 generally prohibits changing the salary or emoluments of public officials after their election or during their term of office. The Oklahoma Supreme Court has acknowledged that “[t]here is no principle of our government that is better settled than the salary or emoluments of a public official cannot be changed during his term of office....” *Edwards v. Carter*, 1934 OK 46, ¶ 7, 29 P.2d 610, 611.

While the terms of section 10 are phrased in the negative, generally prohibiting an increase in salary or emoluments, the Court has consistently determined that “the salary of an officer may be increased after his election or during his term of office where the law that operates to increase the salary was enacted prior to his election.” *State ex rel. Edmondson v. Oklahoma Corporation Commission*, 1998 OK 118, 971 P.2d 868, 872; *see also Presley v. Board of County Commissioners*, 1999 OK 45, 981 P.2d 309; *Barton v. Derryberry*, 1972 OK 116, 500 P.2d 281. Thus, the answer to your question turns on what “enacted” means in relation to the date of the election. And, most relevant here, “the salary of the sheriff was governed by the act in force at the time of his election and qualification.” *Jones, et al. v. Louthan*, 1913 OK 79, 130 P. 139. The term

⁷ House Bill 2914 lists an effective date of July 1, 2024, and an emergency clause providing that “an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.” House Bill 2914, Sections 6 and 7. Laws containing both an emergency clause and an effective date at a fixed future date are effective on the date fixed. *Cities Service Oil Co. v. Oklahoma Tax Commission*, 1942 OK 307, ¶ 15, 129 P.2d 597, 599 (“Although the emergency clause in the case provided that the Act take effect and be in full force from and after its passage and approval, that provision should be looked upon as subordinate to the express provision contained in the body of the Act suspending its operation until a future date.”); *see also* OKLA. CONST. art. V, § 58. Accordingly, House Bill 2914 was effective on July 1, 2024.

“enactment” means “passed by the respective Houses of the Legislature” and a “bill passed by the Legislature as to which all of the required formalities have been performed....” *Jones v. Winters*, 1961 OK 224, ¶ 36, 365 P.2d 357, 362; *Norris v. Cross*, 1909 OK 316, 105 P. 1000, 1001. Accordingly, a sheriff is entitled to an increase in salary under title 19, section 180.65, as amended, if the sheriff was elected after May 30, 2024—the date of enactment. Finally, in this scenario, the sheriff is entitled to at least the minimum statutory salary as of July 1, 2024—the effective date of House Bill 2914. It follows then that if said sheriff did not receive the minimum salary required post-July 1, 2024, the sheriff is entitled to back pay for the period that the sheriff did not receive the minimum required salary.

As indicated above, the views and analysis set forth in this letter of counsel belong to the undersigned and do not constitute an official Attorney General Opinion. As a result, this letter is advisory only. Please let us know if you have any follow-up questions. We can be contacted by phone at (405) 521-3921 or by email at bradley.clark@oag.ok.gov or thomas.schneider@oag.ok.gov.

Sincerely,



BRAD CLARK
General Counsel



THOMAS R. SCHNEIDER, LL.M.
Deputy General Counsel