

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 24, 2018

The Honorable Michael Guest
District Attorney, Twentieth Judicial District
Post Office Box 68
Brandon, Mississippi 39043

Re: Employment of Part-Time Assistant District Attorney

Dear Mr. Guest:

Attorney General Jim Hood received your letter of request and has assigned it to me for research and reply.

Issue Presented

In your letter, you ask:

May my office employ a prosecutor to work twenty (20) hours per week as a *part-time* assistant district attorney and may that individual also maintain a private law practice outside of the twenty (20) hours dedicated to his position as a part-time prosecutor as long as that practice does not include the representation of criminal defendants?

Response

Mississippi Code Section 25-31-39 specifically prohibits the employment of part-time district attorneys.

Applicable Law

Section 25-31-39 provides:

There shall be no part-time district attorneys or part-time legal assistants to district attorneys; however, any person not serving as a legal assistant to the district attorney who is appointed by the Governor to serve as district attorney to fill a vacancy occurring in such office until such office

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shall be filled by a special or regular election as provided by Sections 23-15-193, 23-15-833 and 23-15-843 shall be allowed to engage in the private practice of law while holding the office of district attorney pursuant to such appointment.

Also, see MS AG Op., Brooks (November 18, 2008) (copy enclosed).

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General

Enclosure

OFFICIAL OPINION

2008 WL 5218334 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
Opinion No. 2008-00616
November 18, 2008

Re: Part-time legal assistants

*1 Robert Brooks, Esq.
Assistant **District Attorney**
P. O. Box 603
Philadelphia, MS 39350

Dear Mr. Brooks:

Attorney General Jim Hood received your request and assigned it to me for research and response.

Issue Presented

Is the **District Attorney** authorized to employ a **part-time** (up to one half **time**) legal assistant as long as the total number of assistants employed does not exceed the number of legal assistants allowed by Section 25-31-5 (1)(h)?

Response

Section 25-31-39 prohibits the employment of **part-time** legal assistants regardless of one's status under the State retirement system.

Background

The requestor is a **full-time** assistant **district attorney** who is contemplating retirement in the near future. The requestor is aware of Section 25-11-127 which permits retirees to continue receiving retirement benefits while being reemployed by a covered employer as long as the retiree does not work more than one-half of the normal working days in any fiscal year or receive more than one-half of the salary in effect.

Applicable Law and Discussion

As you note in your request, Section 25-31-5 provides, in **part**:

(1) The following number of **full-time** legal assistants are authorized in the following circuit court **districts**:

* * *

(h) Eighth Circuit Court **District** three (3) legal assistants

* * *

2) In addition to any legal assistants authorized pursuant to subsection (1) of this section, the following number of **full-time** legal assistants are authorized (i) in the following circuit court **districts** if funds are appropriated by the Legislature to adequately fund the salaries, expenses and fringe benefits of such legal assistants, or (ii) in any of the

following circuit court **districts** in which the board of supervisors of one or more of the counties in a circuit court **district** adopts a resolution to pay all of the salaries, supplemental pay, expenses and fringe benefits of legal assistants authorized in such **district** pursuant to this subsection:

* * *

h) Eighth Circuit Court **District** two (2) legal assistants

* * *

(4) The **district attorney** of any circuit court **district** may employ additional legal assistants or criminal investigators, or both, without regard to any limitation on the number of legal assistants authorized in this section or criminal investigators authorized by other provisions of law to the extent that the **district attorney's** office receives federal funds which may be expended for those positions in an amount sufficient to pay all of the salary, supplemental pay, expenses and fringe benefits of the positions. Such funds shall be transferred by the **district attorney** to the Department of Finance and Administration, which shall disburse the funds to such employees in the same manner as state-funded criminal investigators and full-time legal assistants.

*2 (Emphasis added).

Section 25-31-39 reads as follows:

There shall be no part-time district attorneys or part-time legal assistants to district attorneys; however, any person not serving as a legal assistant to the **district attorney** who is appointed by the Governor to serve as **district attorney** to fill a vacancy occurring in such office until such office shall be filled by a special or regular election as provided by Sections 23-15-193, 23-15-833 and 23-15-843 shall be allowed to engage in the private practice of law while holding the office of **district attorney** pursuant to such appointment.

(Emphasis added).

While Section 25-11-127 of the retirement law permits a retiree to be reemployed by a covered employer on a limited basis in certain instances and still receive a retirement allowance, Section 25-31-39 contains a prohibition against the employment of **part-time** legal assistants by **district attorneys**.

Conclusion

It is the opinion of this office that Section 25-31-39 prohibits the employment of **part-time** legal assistants regardless of one's status under the State retirement system.

Very truly yours,

Jim Hood

Attorney General

By: Chuck Rubisoff

Special Assistant Attorney General

2008 WL 5218334 (Miss.A.G.)