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EXECUTIVE #1

JUN 29 2018

**ATTORNEY GENERAL**

## COURT OF CRIMINAL APPEALS

### Oklahoma Judicial Center

2100 N. Lincoln Boulevard, Suite 2, Oklahoma City, OK 73105

Gary L. Lumpkin  
Presiding Judge

David B. Lewis  
Vice-Presiding Judge

Robert L. Hudson  
Judge

Dana Kuehn  
Judge

Scott Rowland  
Judge

June 28, 2018

The Honorable Mike Hunter  
Attorney General of the State of Oklahoma  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105

Dear General Hunter:

By means of this letter and pursuant to Title 74 §18b(5), The Judges of the Oklahoma Court of Criminal Appeals respectfully request an informal opinion letter from your office on the following question which directly affects not only Oklahoma Judges but also our statewide elected officials:

**What is the effective date of the pending judicial salary increase for Oklahoma Judges, including the five Judges of this Court, which was enacted in November of 2017 by the Oklahoma Board on Judicial Compensation?**

Title 20 Section 3.2 of the Oklahoma Statutes creates the Board on Judicial Compensation, requires that Board to meet in odd numbered years, and empowers it to fix the compensation for the State Judiciary, subject to the power of the Legislature and Governor to amend or reject it:

**A. There is hereby created the Board on Judicial Compensation. Pursuant to the provisions of Section 11 of Article VII of the Oklahoma Constitution, members of the State Judiciary shall**

**receive compensation as shall be fixed by the Board on Judicial Compensation as provided in this act, unless such compensation is rejected or amended by law passed by a majority vote of each house of the Legislature. If the Governor vetoes such a law, the procedure shall be the same as for the veto of any other bill or joint resolution.**

Section 3.3 provides an effective date for the Board's actions:

**B. Any change in judicial compensation, unless rejected or amended as provided for in Section 2 of this act, shall become effective on July 1 of the following calendar year. Any amendment passed by a majority vote of each house of the Legislature shall become effective as provided by said amendment unless vetoed by the Governor.**

Section 31.2 sets forth the salary of the Judges of the Oklahoma Court of Criminal Appeals, and provides that “[a]ny increase in salary provided for in subsection A of this section must be paid from existing available funds.” The Court has available in FY-19 appropriation sufficient funds for the raises.

In 2013 the Board recommended a salary increase of 12% for judges, but the raise given thereafter was only 6%. In November of 2017, the Board met and issued a report concluding as follows:

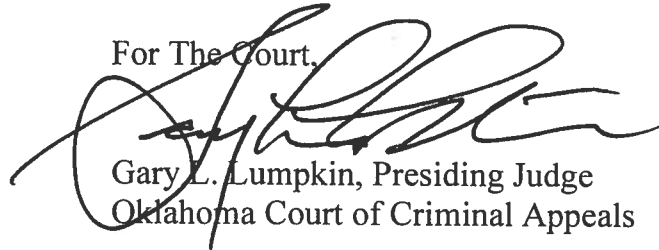
**Therefore, the Board on Judicial Compensation recommends that the Oklahoma Legislature increase the Judicial Budget to include the remaining 6% increase in compensation previously endorsed for all judges and justices and, recognizing the difficult budget issues facing the 2018 legislative session, recommends that the raise commence by July 1, 2019.**

A copy of the Board's 2017 Final Report is appended hereto as Attachment 1. During the 2018 session, the Legislature did not exercise its prerogative to amend or reject the Board's action, and thus it appears this increase takes effect by operation of law on July 1, 2018.

This Court contracts with the Office of Management and Enterprise Services (OMES) for payroll and budgeting services. In response to our recent inquiry about our payroll and budget starting on July 1, OMES has advised The Court that it does not wish to make that legal determination and has advised that an Attorney General's Opinion should be sought. It is for this reason that we seek the legal opinion of your office to provide OMES authorization to apply the Board's action.

As mentioned at the outset of this letter, it should be noted that the salaries of statewide elected officials are linked to judicial salaries, and that those salaries may not be increased during any given term of office. Thus, time is of the essence for resolving this issue since those officials will begin new four-year terms in the coming months.

For The Court,

A handwritten signature in black ink, appearing to read 'Gary L. Lumpkin', is written over the typed name and title.

Gary L. Lumpkin, Presiding Judge  
Oklahoma Court of Criminal Appeals

Enclosure-Attachment 1

cc: Denise Northrup  
Director, OMES

**Board on Judicial Compensation  
November 7, 2017  
2:30 p.m.  
Oklahoma Judicial Center, Oklahoma City, Oklahoma**

**2017 BOARD ON JUDICIAL COMPENSATION FINAL REPORT**

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The Oklahoma Board on Judicial Compensation ("Board") was required by law to meet on Tuesday, September 19, 2017. No quorum was present; therefore, no meeting was held.

A special meeting of the Board was convened on November 7, 2017, at which time a quorum of members was present. All five of the currently appointed members were present. Two positions had not been filled.

The Board noted that their appointing authorities had selected them, according to statute, to represent different types of Oklahoma industries and professions. From these business roles in their communities, they understand the importance of a fair and independent judiciary; and, they recognize the strength of the judiciary depends upon the quality of the judge and the resources of the court.

Although judicial staff are not within the purview of this Board, the Board heard the concerns expressed by Chief Justice Combs of the Oklahoma Supreme Court about the critical shortage of court reporters and the inability to attract or retain sufficient numbers to this position. The Board echoed the words of Presiding Judge Lumpkin of the Oklahoma Court of Criminal Appeals, who thanked the Chief Justice for leading efforts to increase court reporter training opportunities through CareerTech and for piloting off-site-reporter projects through the court's Skype technology. With support staff to the trial judges being compensated less than surrounding states – and Oklahoma the only state which requires a court reporter to purchase his/her own equipment, the Board urges the Oklahoma Legislature not to neglect the courts' employees and to work toward a significant increase in salary for secretary bailiffs and court reporters to better assist the access to and administration of justice in Oklahoma courts.

The Board also noted that in 2011, the Oklahoma Legislature rejected the Board's recommendation to increase judicial compensation and that since 2013, the State of Oklahoma has neither accepted nor funded the total recommendation of this Board to increase the salaries of judges and justices by 12%; but, instead, the Oklahoma Legislature enacted a partial increase of 6% in judicial compensation.

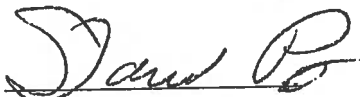
Four members of this Board were serving in this position when the 2013 Board presented its report. Benchmarks considered by the Board included median salaries of trial and appellate judges in the region and in surrounding states; and, compensation of attorneys in the private sector, with special notice of compensation of young attorneys in large metro Oklahoma law firms. Information was collected regarding salaries of professors in Oklahoma Law Schools. Updated data from January, 2017, shows that judicial compensation in Oklahoma is still significantly below both the national median salary and the average compensation of contiguous states.

This Board finds the 2013 report and recommendation continue to be accurate and valid and further finds that additional compensation to reach the regional average remains necessary to attract and retain the best and brightest legal minds to the Oklahoma Judiciary. The Board is aware of the realities of today's legislative fiscal climate and is not recommending any additional cost of living adjustment to the 6% remaining from the 2013 report. While Oklahoma remains behind the benchmarks presented four years ago, our state will continue to lose the interest of individuals who could serve the Third Branch but who cannot afford to leave the financial certainty of private practice. Every Oklahoman benefits from an efficient and well-qualified judiciary. Maintaining our systems of justice requires commitment and after concluding our review, this Board determines that it is time for the State of Oklahoma to increase its investment.

Therefore, the Board on Judicial Compensation recommends that the Oklahoma Legislature increase the Judicial Budget to include the remaining 6% increase in compensation previously endorsed for all judges and justices and, recognizing the difficult budget issues facing the 2018 legislative session, further recommends that the raise commence by July 1, 2019.

The Board understands that in the past there has been resistance and resentment to the linking of judicial salaries to salaries of other elected officials. Those salaries are not part of this Board's responsibility; therefore, we have no objection if the Legislature chooses to sever that link.

Dated this 21 day of November, 2017.

  
David W. Pitts, Chairman

Recorded Votes:

Ayes: Brenda Barwick, William Frankfurt, Donnie, Nero, David Pitts, Ty Tyler  
Nays: 0 (none)

## **Board on Judicial Compensation Final Reports Since 2005**

2005 – The compensation for all judicial officers was raised approximately 15%, effective July 1, 2006.

2007 – All judicial officers received a 5% increase effective July 1, 2008.

2009 – Chief Justice Edmondson requested that the Board freeze judicial salaries as a result of the state recession and the Board agreed.

2011 – The Board's Final Report recommended a 6% pay increase to all judicial officers; however, the Board's report was rejected by the Oklahoma Legislature in 2012.

2013 – The Board recommended a 12% pay increase for all judicial officers. The 2014 Oklahoma Legislature granted the judges of the District Courts a 6% pay increase and rejected the increase for the judges of the appellate courts. As a result, some District Court judges receive higher compensation than Court of Civil Appeals judges.

In 2015, the Oklahoma Legislature granted a 6% increase to all appellate judges, effective August, 2015.

2015 – The Board acknowledged that the Oklahoma Legislature had increased judicial compensation by 6% since 2013, but reasserted its position that the 12% increase recommended in 2013 was still an accurate and valid request. The Board further acknowledged that due to the state's current financial difficulties, no recommendation would be made to implement the remaining 6% increase in compensation.

Board on Judicial Compensation  
November 3, 2015  
10:00 a.m.  
Oklahoma Judicial Center, Oklahoma City

2015 BOARD ON JUDICIAL COMPENSATION FINAL REPORT

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The Oklahoma Board on Judicial Compensation ("Board") met on Tuesday, September 15, 2015, as required by law, to consider whether or not the compensation of the judicial officers in Oklahoma should be modified. No quorum was present. The Board adjourned without taking any action.

A second meeting of the Board was convened on November 3, 2015, at which time a quorum of members was present,

The Board found that the 2013 report of the Board, which recommended that salaries of judges and justices should be increased by 12%, was still accurate and valid. The Board also found that the Oklahoma Legislature accepted the 2013 findings in part and enacted a 6% increase in judicial salaries. Further, the Board found that due to the economic climate and financial difficulties currently facing the State of Oklahoma, no recommendation should be made to implement the remaining 6% increase.

Therefore, the Board on Judicial Compensation recommends that the Oklahoma Judiciary continue to receive the salary and benefits currently allowed by law.

Dated this 17<sup>th</sup> day of November, 2015.



David W. Pitts, Chairman

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Recorded Votes:

Ayes: Brenda Barwick, William Frankfurt, Donnie Nero, David Pitts, Ty Tyler, and Doug Williams  
Nays: 0 (none)

BOARD ON JUDICIAL COMPENSATION  
SEPTEMBER 17, 2013  
10:00 A.M.  
OKLAHOMA JUDICIAL CENTER, OKLAHOMA CITY

## 2013 BOARD ON JUDICIAL COMPENSATION FINAL REPORT

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The Oklahoma Board on Judicial Compensation ("Board") met on Tuesday, September 17, 2013, to consider whether or not the compensation of our state judicial officers should be modified. The Board found that the judicial salaries of our justices and judges should be increased for the following reasons:

- 1) The decisions of our justices and judges have a significant impact on the lives of every Oklahoman;
- 2) Oklahomans want and expect to attract and retain the best attorneys possible to fill every judicial office;
- 3) Judicial experience and tenure increase the public's confidence in judicial officers and their work;
- 4) Adequate judicial compensation promotes the retention of well-qualified judicial officers;
- 5) The Supreme Court has taken major steps to increase its efficiency in both the appellate courts and district courts since 2007, including the enhanced use of technology, voluntary budget reductions in the district courts, and significant increases in district court collections;
- 6) Over 80% of the operating funds necessary to operate the district courts are collected from fines, fees and other assessments;
- 7) Justices and judges have not had an adjustment in salary since 2007;
- 8) These salary recommendations for justices and judges set forth below are designed to provide:
  - our justices and judges with salaries commensurate with other states in our geographic region;
  - for increases in the cost of living since 2007;
  - compensation commensurate with consumer price index since 2007;
  - compensation compared with both the public and private sector; and,
  - adequate compensation for the work performed and to continue to attract and retain the best possible judges.



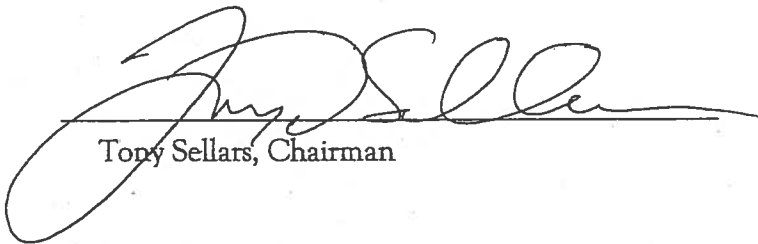
9) The next opportunity to implement a pay raise will not occur until July 1, 2016.

Therefore, the salaries of the following judicial officers shall be increased beginning July 1, 2014, as follows:

Position	Salary	Number of Positions
Chief Justice of the Supreme Court	\$164,640.00	1
Associate Justices of the Supreme Court	\$154,174.00	8
Presiding Judge of the Court of Criminal Appeals	\$159,583.00	1
Judges of the Court of Criminal Appeals	\$154,174.00	4
Presiding Judge of the Court of Civil Appeals	\$148,764.00	1
Judges of the Court of Civil Appeals	\$146,059.00	11
District Court Judges	\$139,298.00	75
Associate District Court Judges	\$128,479.00	77
Special District Court Judges	\$117,659.00	89

The members of the state judiciary should also continue to receive any other compensation benefits allowed by law.

Dated this 26<sup>th</sup> day of September, 2013.



Tony Sellars, Chairman

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Recorded Vote:

Ayes: Brenda Barwick, William Frankfurt, Reid Mullins, Donnie Nero, David Pitts, Tony Sellars

Nays: 0



MIKE HUNTER  
ATTORNEY GENERAL

July 12, 2018

The Honorable Gary L. Lumpkin, Presiding Judge  
Oklahoma Court of Criminal Appeals  
Oklahoma Judicial Center  
2100 N. Lincoln Blvd., Suite 2  
Oklahoma City, OK 73105

**Re: Attorney General Opinion Request No. U-17**

Dear Judge Lumpkin:

I am writing in response to inquiry regarding the effective date of a change to judicial salaries made by the Oklahoma Board on Judicial Compensation (the “Board”). By way of background, the Board meets in odd-numbered years to consider changes to judicial compensation. 20 O.S.2011, § 3.3(A).<sup>1</sup> Such changes shall be made by a majority vote of a quorum of the Board “not later than the third Tuesday of November in said odd-numbered year[.]” *Id.* Members of the Oklahoma judiciary “shall receive compensation as shall be fixed by the Board..., unless such compensation is rejected or amended by law passed by a majority vote of each house of the Legislature.” *Id.* § 3.2(A). “Any change in judicial compensation, unless rejected or amended [by the Legislature], shall become effective on July 1 of the following calendar year.” *Id.* § 3.3(B).

Before 2013, salaries of the Oklahoma judiciary had not been increased since 2007. In its 2013 report, the Board acknowledged this fact and emphasized, among other things, the importance of an experienced, well-qualified judiciary. OKLA. BD. ON JUDICIAL COMP., FINAL REPORT 1 (2013). Accordingly, the Board enacted a 12% salary increase—effective July 1, 2014—for all judges to provide salaries comparable to those of judges in neighboring states and those of public and private sector attorneys. *Id.* at 2. Before the increases took effect, however, the Legislature passed House Joint Resolution No. 1096 to (i) amend the salary increases for district court judges to a 6% increase, and (ii) reject salary increases for the State’s appellate judges. *See* H.R.J. Res. 1096, 54<sup>th</sup> Okla. Legislature, 2<sup>nd</sup> Reg. Session, § 1 (2014).

In 2015, the Legislature approved a 6% salary increase for the State’s appellate judges to match the increase given to district judges in 2013. *See* 2015 Okla. Sess. Laws c. 399. With the full judiciary having received a 6% increase, the Board declared in its 2015 report that its findings

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<sup>1</sup> In performing this function, “the Board shall consider various factors, including judicial compensation in other states, with an emphasis on states within the region, the value of comparable services performed in the private sector, compensation of attorneys in the private and public sectors, compensation of other state, county and municipal public officials, and changes in the cost of living.” *Id.*



from 2013 were “still accurate and valid,” but concluded that “due to the economic climate and financial difficulties currently facing the State,” no further salary increases should be implemented. OKLA. BD. ON JUDICIAL COMP., FINAL REPORT (2015).

Most recently, the Board met on November 7, 2017 and again concluded that its 2013 findings “continue to be accurate and valid and...that additional compensation to reach the regional average remains necessary to attract and retain the best and brightest legal minds to the Oklahoma Judiciary.” OKLA. BD. ON JUDICIAL COMP., FINAL REPORT 2 (2017). Accordingly, the Board recommended that all State judges and justices receive “the remaining 6% increase in compensation previously endorsed[.]” *Id.* In addition, the Board, “recognizing the difficult budget issues facing the 2018 legislative session, further recommend[ed] that the raise commence *by July 1, 2019.*” *Id.* (emphasis added). This would diverge from the statutory mandate that “change[s] in judicial compensation, unless rejected or amended [by the Legislature], *shall become effective on July 1 of the following calendar year.*” 20 O.S.2011, § 3.3(B) (emphasis added).

Based on the foregoing, you have asked when a judicial salary increase enacted by the Board becomes effective if left unchanged by the Legislature. This question is answered by the plain text of the statute. When the Board enacts changes to judicial compensation in an odd-numbered year, such changes go into effect on July 1 of the next calendar year. Thus, a salary increase fixed by the Board at its 2017 meeting would become effective on July 1, 2018. This conclusion is the same even if the Board recommends a different effective date. *See, e.g., Henderson v. Maley*, 1991 OK 8, ¶ 24 n.7, 806 P.2d 626, 633 n.7 (“[A]n administrative agency does not have the authority...to act contrary to the statute which is the source of its authority.”).

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



MIKE HUNTER  
ATTORNEY GENERAL

cc: Denise Northrup, Director  
Office of Management and Enterprise Services  
2401 N. Lincoln Blvd., Rm. 118  
Oklahoma City, OK 73105