

Judiciary Law §§ 182, 183-a, 212(2)(c), 221-b, 221-d, 224; N.Y. Const. VI, § 26(i); 22 N.Y.C.R.R part 121, §§ 121.3, 121.4

The statutory minimum salary for the Cayuga County district attorney is the salary established for county court judge by Judiciary Law § 221-d even when the judge is serving as acting supreme court justice.

July 16, 2009

Frederick R. Westphal
County Attorney
Cayuga County
160 Genessee Street
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Informal Opinion
No. 2009-3

Dear Mr. Westphal:

You have asked about the minimum salary required to be paid to the district attorney of Cayuga County. Your question arises because the Judiciary Law provides that the district attorney of Cayuga County shall receive a salary equivalent to that of a county court judge, and the sole county court judge in Cayuga County is at present sitting as an acting supreme court justice and receiving the higher salary payable to such justices. You ask whether the district attorney is entitled to the salary actually being paid to the county court judge (\$136,700), or to the salary authorized by statute for the county court judge (\$122,700).

Judiciary Law § 183-a governs the salary of district attorneys in many counties outside New York City, including Cayuga County. It provides that in counties with a population of more than five hundred thousand, district attorneys shall receive a salary equivalent to that of a supreme court justice. In counties with a smaller population and meeting certain other requirements, the district attorney shall receive an annual salary equivalent to that of county court judge in the county in which the district attorney is elected or appointed. In any case, the district attorney may also receive such additional compensation as the legislative body of such county may provide by local law. Judiciary Law § 183-a.

You have advised that Cayuga County is subject to the requirement that its district attorney be paid the same amount as the county court judge in Cayuga. The annual salary for county court judge in Cayuga County currently is \$122,700. Judiciary Law § 221-d. You have further explained that there is only one county court judge in Cayuga County, and that judge has been designated an acting supreme court justice, and is accordingly receiving the higher annual salary due to supreme court justices as established by Judiciary Law § 221-b, currently set at \$136,700. See

Judiciary Law § 221-b (salary of supreme court justices); *id.* § 224 (compensation of judges on temporary assignment). You have therefore asked whether the district attorney for Cayuga County is to be paid \$122,700 or \$136,700. As explained below, we conclude that the statutory minimum salary for the district attorney is the salary established for county court judge in Cayuga County by Judiciary Law § 221-d. The contrary interpretation would be inconsistent with the general structure of the statute, and would create unworkable difficulties in applying the statute.

First, the structure of Judiciary Law § 183-a establishes a relationship between a county's population and the minimum salary to be paid its district attorney: counties with larger populations are required to pay higher salaries. As the Court of Appeals has observed, "The Legislature's choice to impose minimum salary requirements for District Attorneys upon counties depending upon their size comports with logic and common sense. It is entirely reasonable to assume that the greater the population in a county, the greater will be its need for a full-time District Attorney as well as its ability to pay that officer an adequate salary." *Kelley v. McGee*, 57 N.Y.2d 522, 540 (1982). This relationship between population and salary would be severed if section 183-a were interpreted to require a smaller county to pay its district attorney the increased salary its county court judge receives for temporarily serving as a supreme court justice rather than the amount Judiciary Law § 221-d establishes for that county's county court judge.

Second, interpreting Judiciary Law § 183-a to mandate the payment of a salary equivalent to that received by a county court judge serving as a supreme court justice would create serious difficulties in application. For example, in several counties with populations between 100,000 and 500,000, rendering them subject to the provisions of Judiciary Law § 183-a, there is more than one county court judge.¹ The chief administrative judge may assign to supreme court some, but not all, of the county court judges in a county. *See* N.Y. Const. Art. VI, § 26(i); Judiciary Law § 212(2)(c); *see also* 22 N.Y.C.R.R. part 121 (rules of chief administrator relating to temporary assignment of judges to the supreme court). In that situation, it would be unclear under the statute which county court judge's salary should serve as the benchmark for the district attorney's salary. Similarly, a county court judge may be assigned to supreme court for a time period and then returned to county court. Under the proposed interpretation, the district attorney's salary would fluctuate with the changes in the assignment of the county court judge. *See* 22 N.Y.C.R.R. § 121.3 (temporary

¹Albany, Broome, Dutchess, Niagara, Oneida, Ontario, Oswego, and Rensselaer Counties have two county court judges, while Onondaga, Orange, and Rockland Counties have three. Judiciary Law § 182. Population information from the 2000 census for these counties can be found at the U.S. Census Bureau's website, at <http://www.census.gov/census2000/states/ny.html>.

assignments are for terms of up to one year); id. § 121.4 (chief administrative judge may terminate temporary assignment at any time). By contrast, if section 183-a is construed to tie the salary of the district attorney to the salary schedule established for county court judges by Judiciary Law § 221-d, the result is an easily applied rule that is consistent with the legislative rationale described by the Kelley court.

For these reasons, we conclude that the district attorney's minimum salary in Cayuga County is that established by Judiciary Law § 221-d, currently set at \$122,700. If the county legislature so chooses, it may of course authorize additional compensation for the district attorney. See Judiciary Law § 183-a.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
In Charge of Opinions