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August 31, 2017

VIA HAND DELIVERY
Commissioner Jason Winters

RE: COMPENSATION TO JON PAYNE

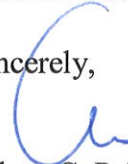
Dear Commissioner Winters:

Please find attached a copy of *Porter v. Calhoun County*, 250 Ga. 566 (1983), wherein our Georgia Supreme Court ruled that a probate judge may keep the fees collected in his capacity as local custodian of vital records. In reviewing this case, you will find that the Supreme Court has definitively ruled that while the Probate Judge of a county is an elected official with a salary controlled by statute, his appointment as the local custodian of vital records is an administrative position that is controlled by a different statute thus making the appointment a separate job. Further, the Court held that due to the wording of the statute enabling the Department of Human Services to appoint *either* the probate judge, an employee of the county board of health, or other qualified person it follows that this appointment is "derived solely by departmental appointment and not by virtue of any county office the custodian may have held." *Porter* at 567. Thus, the fees that Judge Payne collects as the appointed local custodian can be retained by him as his compensation for this appointed position. Chattooga County is not entitled to this money.

Based upon this, you will immediately retract your prior demand for these monies to be placed with the Clerk of Chattooga County. Further, I would ask that you formally apologize to Judge Payne in person and in the media as your actions have disparaged his character and the respectability that Judge Payne has worked so hard in his many years in office to gain and garner. Your actions without properly investigating your claim has caused him and his office staff substantial upset and distress and has greatly impacted the workings of the Probate Court to the detriment of the citizens of Chattooga County.

I personally find your actions reprehensible that you, as Commissioner, would not have the County Attorney look at this issue and investigate it prior to issuing this directive and giving this directive to the media. I found this case within five minutes of researching the issue. I expect a headline as large as the one in this week's paper exonerating Judge Payne for these false allegations of misconduct and malfeasance.

Sincerely,



Albert C. Palmour

ACP/mh

cc: Judge Jon Payne
Chris Corbin
The Summerville News



Neutral

As of: August 31, 2017 9:00 PM Z

Porter v. Calhoun County

Supreme Court of Georgia

February 16, 1983, Decided

No. 38998

Reporter

250 Ga. 566 *; 300 S.E.2d 143 **; 1983 Ga. LEXIS 587 ***

PORTER v. CALHOUN COUNTY

Prior History: [***1] Certiorari to the Court of Appeals of Georgia -- [162 Ga. App. 839](#).

Disposition: *Judgment reversed.*

Core Terms

custodian, probate judge, appoint, records, vital, county board, collecting fees, fee basis, salary, general rule, salary basis, fees paid, formerly, provides, elected, offices, argues, duties, repeal

Case Summary

Procedural Posture

Appellant probate judge sought review of a decision of the Court of Appeals of Georgia, which affirmed a decision in favor of appellee county in its action to recover fees received by the probate judge in his capacity as custodian of vital records.

Overview

In addition to his judicial position, the probate judge served as the custodian of vital records for the county. The probate judge kept the fees paid to him as custodian. The county successfully brought an action to recover the fees. The court on appeal reversed and held that the probate judge was entitled to keep the fees paid to him as custodian. The court found that the compensation of probate judges and custodians were established by separate statutes. Because O.C.G.A. § 88-1703(7) authorized the Department of Human Resources of Georgia to appoint someone other than the probate judge to be custodian, it demonstrated that a local custodian's authority and duties were derived solely by departmental appointment and not by virtue of any county office the custodian might have held. Consequently, fees collected by the probate judge for services rendered as a local custodian could not be said to be fees collected in his judicial office as probate judge. Furthermore, O.C.G.A. §§ 88-1701(c), (d) and 88-1725 (c) provided that fees were to be paid directly to the local custodians and not to the counties.

Outcome

The court reversed the decision below, finding in favor of the probate judge.

LexisNexis® Headnotes

Governments > Local Governments > Finance

Governments > Courts > Judges

[HNI](#) **Local Governments, Finance**

The probate judge shall collect all fees formerly allowed as compensation in any capacity in his office, and pay the same into the county treasury. 1971 Ga. Laws 2914.

Governments > Local Governments > Employees & Officials

Governments > Courts > Judges

[HN2](#) **Local Governments, Employees & Officials**

The Probate Judge of Calhoun County is an elected official whose salary is controlled by 1971 Ga. Laws 2914 and [O.C.G.A. §§ 15-9-63](#) and [15-9-64](#). In contrast, the local custodian of vital records is an administrative officer appointed by the Department of Human Resources. O.C.G.A. § 88-1703(7). Pursuant to this provision, the Department is authorized to appoint the judge of the probate court, an employee of the county board of health, or other qualified person to be a local custodian.

Governments > Local Governments > Employees & Officials

[HN3](#) **Local Governments, Employees & Officials**

O.C.G.A. §§ 88-1701(c), (d) and 88-1725(c) provide that fees are to be paid directly to the local custodians and not to the counties, except when the local custodian is an employee of the county board of health.

Counsel: *Eugene C. Black, Jr.*, for appellant.

Willis A. Duvall, for appellee.

Judges: Bell, Justice. All the Justices concur.

Opinion by: BELL

Opinion

[*566] [**143] This Court granted certiorari to consider whether Charles Porter, who is both the Probate Judge and Custodian of Vital Records of Calhoun County, is entitled to keep fees paid to him as custodian of vital records, or whether the county is entitled to such fees. Porter v. Calhoun County, 162 Ga. App. 839 (293 SE2d 4) (1982).

Charles Porter was elected Probate Judge of Calhoun County on November 28, 1978 [**144] and was appointed Custodian of Vital Records for Calhoun County by the Department of Human Resources on November 29, 1978. From his date of appointment until October 1, 1980, Porter paid all fees received in his capacity as custodian of vital records to Calhoun County. After October 1, 1980, Porter began to keep these fees, believing that he personally, and not the county, was entitled to them. The county filed suit to recover the fees and won. The Court of Appeals affirmed. We reverse.

Art. IX, [***2] Sec. I, Par. X of the Georgia Constitution (Code Ann. § 2-5809) provides that "County officers may be on a fee basis, salary basis, or fee basis supplemented by salary, in such manner as may be directed by law." Pursuant to this constitutional authority, the General Assembly enacted a special law placing the Probate Judge of Calhoun County on a salary. Georgia Laws 1971, p. 2914. It provides that HNI[↑] the probate judge shall collect "all fees . . . formerly allowed as compensation in any capacity in his office . . . , and pay the same into the county treasury. . . ."

Calhoun County argues that "all fees formerly allowed as compensation" include fees collected by the Probate Judge when acting as local custodian of vital records. In support, it points out that in Calhoun County it is customary for the Probate Judge to serve as custodian and that only since the enactment of Georgia Laws 1971, p. 2914, has the Probate Judge paid fees collected as custodian to the county. Furthermore, the county argues that Porter's appointment as custodian is consistent with this history; indicates he was appointed custodian by virtue of his position as Probate Judge; and [*567] leads to the conclusion [***3] that fees paid to him as custodian should be paid to the county.

We disagree with this conclusion for the reason that the authority and compensation of the two offices are established by separate statutes.

First, HN2[↑] the Probate Judge of Calhoun County is an elected official whose salary is controlled by Georgia Laws 1971, p. 2914 and O.C.G.A. §§ 15-9-63 and 15-9-64 (Code Ann. § 24-1701b). In contrast, the local custodian of vital records was an administrative officer appointed by the Department of Human Resources (the Department). Former Code Ann. § 88-1703 (7).¹ Pursuant to this provision, the Department was authorized to appoint "the judge of the probate court, [an] employee of the county board of health, or other qualified person" to be a local custodian. *Id.* Because this section authorized the Department to appoint someone other than the Probate Judge, it demonstrates that a local custodian's authority and duties were derived solely by departmental appointment and not by virtue of any county office the custodian might have held. Consequently, fees collected by a Probate Judge for services rendered as a local custodian cannot be said to be fees collected "in his office" as [***4] Probate Judge.

¹ Georgia Laws 1964, pp. 499, 582 (Former Ga. Code § 88-1703 (7)). Chapter 88-17 of the Georgia Code was repealed by Georgia Laws 1982, pp. 723, 724 (O.C.G.A. Chapter 31-10, Code Ann. Ch. 88-17). Compare O.C.G.A. § 31-10-4 (Code Ann. § 88-1704), pursuant to which the Department's commissioner appoints a state registrar of vital records, who is authorized under § 31-10-6 (a) (Code Ann. § 88-1706) to appoint local custodians for each county. These "appointees must meet the qualifications and perform the duties required by this chapter and regulations of the department." O.C.G.A. § 31-10-6 (a) (Code Ann. § 88-1706). It should be noted that in the instant case former Chapter 88-17 of Georgia Code Ann. will be cited since this case arose prior to its 1982 repeal.

Furthermore, the general laws governing local custodians specifically prescribed the method of their compensation. Former Code Ann. §§ 88-1701 (c) and (d) and 88-1725 (c). ² [HN3](#)^[↑] These sections provided that fees were to be paid directly to the [***5] local custodians [**145] and not to the counties, except when the local custodian was an employee of the county board of health. Because the expression or designation [*568] of one thing amounts to the exclusion of another, (*expressio unius est exclusio alterius*) see, Sutherland, *Statutory Construction*, Vol 2A, § 47.23 (1973); [Taylor v. Davis, 242 Ga. 528, 531 \(250 SE2d 449\) \(1978\)](#), the sole exception of employees of the county board of health from the general rule that local custodians shall keep their fees clearly infers that the General Assembly meant to include other custodians in the general rule, notwithstanding any other offices they might have held. For the above reasons, we find that Porter was entitled to the fees in question.

[***6] *Judgment reversed.*

End of Document

² Georgia Laws 1964, pp. 499, 584, 596 (Former Ga. Code §§ 88-1707 (c) & (d) and 88-1725 (c)). See footnote 1 for the history of Chapter 88-17. Compare § 31-10-8 (c) & (d) (Code Ann. § 88-1708), pursuant to which the local custodian shall keep fees except when he is an employee of the county board of health, and [O.C.G.A. § 31-10-27](#) (Code Ann. § 88-1727), under which the local custodian shall keep fees "whether he is paid on a fee basis, a salary basis, or a combination of both," except when he is an employee of the county board of health.