

*Michelle Ready*

FW: Independent Citizens Commission [#57]

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I feel very strongly that the proposed increase for Prosecuting Attorneys is way outside the realm of what is acceptable for Arkansas. The median income for Arkansas is no where near the current salary much less the proposed 23% increased salary. Even with a comparable education most would not enjoy such a salary. Especially a government salary with the accompanying benefits and retirement.

*Carlton D. Jones*

Prosecutor's Salaries

Commission Members,

Allow me to add my opinion of the proposed increase to the salaries of the elected prosecuting attorneys in our state. An increase is well deserved.

Speaking from twenty five years of service to our state in the capacity of a former Deputy Prosecuting Attorney and an elected Prosecuting Attorney for the Eighth Judicial District South, I know the challenges of attracting and maintaining attorneys to these offices. The State of Arkansas has been blessed with men and women of good character and are good lawyers to serve in these positions, but other options that are more financially rewarding cause some to leave the office for "greener" pastures. We should endeavor to make the positions more financially attractive so that those who wish to serve the citizens of our state are rewarded for their commitment to the rule of law and our state.

Respectfully submitted,

Carlton D. Jones

May 4, 2015

The Independent Citizen's Commission  
c/o Office of State Auditor, State Capitol  
Little Rock, AR 72201

Re: Prosecuting Attorneys

Dear Commission Members,

I have been requested to offer input on the issue of raises for the elected Prosecuting Attorneys here in Arkansas.

While, as an elected prosecutor for 20 years, a deputy for 8 years and having served as the State's Special Prosecuting Attorney for 7 years, I feel that I have a baseline of useful information, I also feel that the Canons of Judicial Ethics preclude me from asking this body to take, or refrain from taking, action on this issue. I am, however of the opinion that I am permitted to share what I believe to be relevant information that may not be widely known.

The office of Prosecuting Attorney is the ultimate charging authority in criminal matters in the State of Arkansas. This is provided in the Constitution. Contrary to common belief, the police do not file charges, they may arrest, but do not decide who will be charged, or with what. Judges do not file charges. A judge's signature is required for an arrest warrant to issue, but not to file charges. Only a Grand Jury, which is attended and served by the Prosecuting Attorney, can file a criminal charge without the imprimatur of the elected Prosecuting Attorney. The Arkansas Code of Professional Conduct recognizes this difference by providing a special section of Rules for Prosecuting Attorneys. This distinction is based in part on the Courts' repeated holdings that the office of the Prosecuting Attorney is "quasi magisterial in nature", by virtue of the fact that so much discretionary authority is vested there. This quasi magisterial aspect is further endorsed by the statutory provision for Prosecutors to issue "Prosecutor Subpoenas", which command individuals to appear and give testimony to the prosecutor, and which have the same effect as Grand Jury subpoenas.

Everybody knows that the Prosecuting Attorney handles all the cases that he or she actually files, what is frequently overlooked is the fact that they also are responsible for "handling" all the cases that don't get filed. The judge, the defense attorney, the public, never see the hundreds, or thousands across the state, of cases presented for prosecution by law enforcement, the public, and many State agencies (such as the Division of Legislative Audit, and others), that the Prosecuting Attorney, in the exercise of their discretion may NOT file, either

because the case was too weak to take to court (a decision best made by the person who would be the one taking the case to court, which decision must be based on experience in the job, knowledge of the law and of the community served), or perhaps upon investigation the proposed defendant is innocent and should not be charged, or for many other reasons. It takes time and expertise to “handle” these cases that are not filed, and perhaps that is the most important and least understood function of the Prosecuting Attorney, NOT charging people who shouldn’t BE charged, but that other people WANT charged, for whatever reason.

I do not need to go into the Death Penalty and who it is that decides whether a case merits the ultimate sanction, and meets the statutory requirements to be sought, who decides who will appear in the newspaper as an accused child rapist, and who, after the soul searching, gut wrenching decisions are made, must then go forth and do battle to see what he or she has determined Justice to be, against the finest trial lawyers in the State, (who incidentally are sometimes paid more for one trial than a deputy prosecutor makes in a year and I make no bones about that, they earn what they are paid), and try to see that vision of Justice done.

Neither will I expound on what it is like to witness the autopsy of a baby and have the responsibility for determining what happened, who did it, what should/can be done about it, and then go out and do it. How it feels to try to comfort a child who lost a parent, a husband who has lost his wife, a small child who has been raped by his own “father”, and to be the person to whom those people look for comfort, for information and for the appropriate resolution of their case. I can state without fear of contradiction that those feelings affect you, they color how you feel about right and wrong and about trying to do what is “right”. Those feelings can ignite a passion for what is “right” that is a wonderful and powerful thing. Those feelings can also affect every aspect of your life. It is not a job that you leave at the office. Ever.

Most attorneys represent one client per case at a time, the Prosecuting Attorney represents the entire State of Arkansas, and as that ultimate charging authority, actually determines what will be officially “right” in a jurisdiction, and what is officially “wrong” and worthy of a public statement of disapprobation.

It is a very specific job for which there is little formal training, little public approbation and great personal and professional risk. It demands the best of a person and provides the opportunity to display the worst. We are indeed Blessed that so many of our best choose this path, and stay with it in the face of so much in our society today that would stop Justice, that makes it so difficult and expensive to do the “right” thing. That is the Prosecuting Attorney’s job in a nutshell, to do the “right” thing. It’s a heck of a job. It’s a heck of a responsibility.

Thank you.

Sincerely,

H.G. Foster

Original signed by H.G. Foster