

71. Compensation and Fees of Officers and Employees

- a. In general
- b. Pensions or retirement benefits
- c. Disability benefits

a. In General

- (1) Right in general
- (2) Form and amount
- (3) Allowance and recovery

(1) Right in General

While the compensation of town officers may be fixed by statute, subject to constitutional limitations, the legislature may delegate to local governmental bodies the power to fix their compensation; but, where no salary has been fixed, either by the town or legislature, the officer is not entitled to any compensation and agents or employees of the town are entitled to only such compensation as the town has expressly or by implication agreed to pay.

Generally speaking, no payment of compensation can be legally made by a town, unless specifically authorized by statute or vote of the town;¹³ and when an inhabitant of a town accepts a position of honor and trust for the benefit of all the inhabitants, whether the position be created by statute or by municipal action, and no provision by law or contract is made for compensation, no duty is imposed on the town to pay such inhabitant for services rendered in performing the uncompensated public duty thus voluntarily assumed.¹⁴ While the com-

penetration of town officers may be fixed by statute,¹⁵ subject to constitutional limitations,¹⁶ the legislature may delegate to local governmental bodies the power to fix their compensation,¹⁷ and where the requisite power exists it may be fixed by the towns themselves.¹⁸ The intention and agreement of the town to compensate its officers may be shown either by previous vote, or by subsequent action ratifying and confirming the doings of the committee or of other agents or officers of the town.¹⁹ Where no salary has been fixed, either by the town or the legislature, the officer is not entitled to any compensation.²⁰ An agreement to compensate an officer cannot be inferred either from the fact of the payment of other officers²¹ or from the custom of other towns.²² However, where a certain rate of compensation has been fixed, an officer is entitled to pay for time and services reasonably necessary for the performance of the duties imposed by law,²³ and, hence, he may be entitled to fees for making all records within the scope of his official duty,²⁴ including records of events occurring before his term begins,²⁵ but, in the absence of contract, not for supplying records lost or destroyed.²⁶ An officer is not entitled to the emoluments of his office accruing before his qualification,²⁷ or after he has vacated the office,²⁸ even though he continues to perform duties as a de facto officer.²⁹ An officer is not entitled to compensation for services beyond the scope of his duties,³⁰ and is not entitled to receive

13. Me.—*Miliken v. Gilpatrick*, 157 A. 714, 130 Me. 498.

Compensation of:

Municipal officers, agents, and employees see Municipal Corporations §§ 522-541, 720-729.

Officers generally see Officers §§ 83-101.

14. Conn.—*Beckwith v. Farmington*, 59 A. 43, 77 Conn. 318.

15. Ill.—*Town of Dry Grove v. Otto*, 166 Ill.App. 234.

Me.—*Miliken v. Gilpatrick*, 157 A. 714, 130 Me. 498.

Pa.—*Snyder v. Lackawanna County Com'rs*, 33 Pa. Dist. & Co. 277, 39 Lack.Jur. 123.

61 C.J. p 141 notes 20, 21.

Rate of commissions is fixed by statute

Pa.—*Skelton v. Tower Merion Tp.*, 173 A. 387, 315 Pa. 356.

16. Provision prohibiting increase or decrease of salary or emoluments of officer after his election or appointment held to apply to town commissioners.—*In re Bowman*, 170 A. 717, 111 Pa.Super. 383.

17. Nev.—*Cawley v. Pershing County*, 255 P. 1073, 50 Nev. 237.

N.J.—*Beyer v. Township Committee of Mount Holly Tp.*, 69 A.2d 42, 6 N.J.Super. 409.

18. Mass.—*Welch v. Emerson*, 91 N. E. 1021, 206 Mass. 129. 63 C.J. p 141 note 19.

Change of salary

Where no constitutional or statutory restriction circumscribes the power, a salary fixed by ordinance pursuant to a grant of discretionary power may be changed by a later ordinance, but where the original power conferred is in the nature of a limited authority to do a single designated thing in the manner and at the time prescribed by the legislature, the town on enacting the original ordinance fixing salaries exhausts its power and has no power to alter or amend the original ordinance.—*Beyer v. Township Committee of Mount Holly Tp.*, 69 A.2d 42, 6 N.J. Super. 409.

19. Mass.—*Arlington v. Peirce*, 122 Mass. 270.

Annual resolution better practice

Without deciding whether it is necessary for township authorities to fix the wages of their employes annually or whether they may carry over the rates from one year to the

next, it has been declared that it is unquestionably better practice to fix the wages by resolution each year.—*In re Litchfield Tp. Sup'rs*, 65 Pa. Dist. & Co. 108.

20. N.H.—*Weston v. Hudson*, 97 A. 743, 78 N.H. 588. 63 C.J. p 141 note 24.

21. Vt.—*Boyden v. Brookline*, 8 Vt. 284.

22. Mass.—*Farnsworth v. Melrose*, 122 Mass. 268.

23. Pa.—*Appeal of Sharpnack*, Com. Pl., 9 Fay.L.J. 214, 38 Mun.L.R. 97. Wis.—*Outagamie County v. Greenville*, 45 N.W. 1090, 77 Wis. 165. 63 C.J. p 142 note 27.

24. Me.—*Lake v. Ellsworth*, 40 Me. 343.

25. Me.—*Lake v. Ellsworth*, supra.

26. Me.—*Lake v. Ellsworth*, supra.

27. Ind.—*Albaugh v. State*, 44 N.E. 355, 145 Ind. 356.

28. Mass.—*Warner v. Selectmen of Amherst*, 95 N.E.2d 180, 326 Mass. 435.

29. Mass.—*Warner v. Selectmen of Amherst*, supra.

30. Mass.—*Murphy v. Clinton*, 65 N. E. 34, 182 Mass. 198.

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TOWNS § 71

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13. *Mt. Pleasant v. Gilpatrick*, 157 A. 714, 130 Me. 493.

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In construing the above courts have repeatedly held salary of a county officer it make a change in the amount. *McCord*, 143 Ill. App. 128; *County v. Parks*, 82 Ill. 346.

the Illinois as fixed the term of office, *County v. Parks*, 82 Ill. 346; *Purcell v. Parks*, 82 Ill. 346.

Section 10 of Article X, *supra*, does not, in itself, definitely specify the time at which the county board is to act in fixing the salary of county officers. However, Par. 38, Chap. 34, Ill. Rev. Stats. 1947, provides as follows:

"The time of fixing the compensation of county officers, which compensation is to be fixed by the county board, shall be at the meeting of such board next before the regular election of the officers whose compensation is to be fixed; but in case where such compensation is not fixed, the board shall proceed, at the next regular or special meeting held thereafter, to fix such compensation."

In *People v. Gregory*, 11 Ill. App. 370, the Court said:

"Under these provisions of the constitution and law it is the duty of the board of supervisors at their September meeting before the election of county officers to fix the compensation of the officers to be elected, with the amount of their necessary clerk hire, stationery, fuel and other expenses."

In *Purcell v. Parks*, 82 Ill. 346, where a county clerk was elected in November, 1873, for a four year term from and after the first Monday in December, 1873, and in the following March the county board entered an order fixing the salary of said officer for the term commencing on the first Monday of December, 1873, Mr. Justice Dickey, in delivering the opinion of the court stated:

"I am instructed by the court to say that, in the opinion of a majority of the judges thereof, the clerk, under the constitution and statute, is not entitled to appropriate to his own use any of the fees of his office, except by virtue of an order of the county board. In the absence of such order, such clerk has no compensation by law whatever. Hence, the fixing of such compensation by the county board, in their order of March, 1874, did not in the sense of the constitution, either increase or diminish the compensation of such officer, for, up to that time, he had, by law, no compensation to be increased or diminished. It was the duty of the county board to have fixed the compensation in question before the election. Not having done so, the power remained unexhausted, and the board might have been compelled either before or after the term began, to exercise the power and fix the same.

"We are all of the opinion that when the board has once acted, and fixed the compensation of the county clerk, that compensation can not be changed so as to increase or diminish the compensation to be received by him during his term. A subsequent order of the county board, increasing or diminishing the compensation of the county clerk, can operate only upon the compensation of clerks whose terms begin after the making of such order."

In *Foot v. Lake County*, 109 Ill. App. 312, it was indicated that where a county board neglects to fix the salary of a county officer mandamus will lie to compel the board to take action in that respect. The court in that case said:

"Assuming that the Act created a new office, and the county board failed or refused to perform its duty in fixing the compensation of the officer, mandamus should be resorted to to require the county board to discharge its duty in such respect; and, until the compensation or salary is fixed by the county board, either voluntarily or by mandamus proceedings, an action at law cannot be maintained to recover the compensation claimed."

In view of the holdings of the courts in the above quoted decisions, it is my opinion that where, as in the instant case, a county board has neglected to perform its duty with respect to fixing the salary of a county officer at the proper time, it may be compelled to take appropriate action in this respect, and that your county board has authority, at the present time, to fix the salary of the Recorder of Deeds for the four year term commencing in December, 1948.

(No. 2—February 2, 1949)

COUNTIES AND COUNTY BOARDS—*sale of real estate*. A county, acting through the board of supervisors, has the power under the statute to sell real estate belonging to the county.

DEEDS—*condition contained in deed*. Where a county acquires property by deed to be used "for county purposes" with no further limitation as to use, such condition does not affect the alienation of the property.

Hon. Kenneth E. Pearce, State's Attorney, White County, Carmi:

I have your detailed letter of January 25, 1949, wherein you request my opinion as to whether White County, acting through its Board of Supervisors, can sell real estate which the county acquired "for county purposes". You did not enclose a copy of the deed, so I must assume the language quoted is the only condition contained in said deed.

You are in doubt as to whether the County Board of Supervisors has authority under Pars. 24 and 25, Chap. 34, Ill. Rev. Stats. 1947, to sell real estate.

Par. 24 *supra*, expressly authorizes the county "to sell and convey or lease any real or personal estate owned by the county". Par. 25 *supra*, relating to the powers of county boards, does not mention the sale of real estate. However, I direct your attention to Par. 15, Chap. 30, Ill. Rev. Stats. 1947, which provides as follows:

"The county board of any county may authorize any officer or member of its board to execute and deliver all deeds, grants, conveyances and other instruments in writing, which may become necessary in selling, transferring or conveying any real estate belonging to its county and such deeds, grants, conveyances and other instruments, if made without fraud or collusion, shall be obligatory upon the county to all intents and purposes."

In view of this explicit statutory authority which is vested in the County Board of Supervisors and Par. 24 *supra*, it is clear and beyond question that White County, acting through its Board of Supervisors, has the power to sell real estate belonging to the county.

You also desire to know whether the fact that the property had been acquired "for county purposes" would prevent the Board of Supervisors from selling the same. The Supreme Court passed upon an almost identical question in the case of *Supervisors of Warren County v. Patterson*, 56 Ill. 111, and held that where a county acquired property "for the purpose of erecting thereon a court house and other county buildings", such condition did not in any way limit the power of sale by the proper county authorities.

This case is cited with approval and the facts condensed and set forth in the case of *Downen v. Rayburn*, 214 Ill. 342, where the court said: