



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

October 24, 2000

FILE NO. 00-013

COMPENSATION:

When an Ordinance Increasing
Elected Municipal Officers'
Salary Is Effective;
Transportation Assistance Payment
as Increase in Elected Officer's Salary

The Honorable James W. Glasgow
State's Attorney, Will County
14 West Jefferson Street
Joliet, Illinois 60432

Dear Mr. Glasgow:

I have your letter wherein you inquire: (1) whether an ordinance of a home rule municipality which increases the compensation of certain elected officials must specify a date or event upon which the increase will take effect; and (2) whether the payment of a fixed amount for "transportation assistance" in accordance with an ordinance adopted in 1993, when no such payments had been received or requested until the officers' current terms, constitutes a prohibited increase in the salary or

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compensation of the elected officials during their current terms of office. For the reasons hereinafter stated, it is my opinion that: (1) the validity of an ordinance of a home rule municipality which increases the compensation of elected municipal officials is not contingent upon the specification of a date certain or event upon which the increase will take effect; and (2) the payment of a sum representing "transportation assistance" that was authorized by ordinance in 1993, but not requested or received until the officers' current terms, does not constitute a prohibited increase in the officers' salaries during their current terms of office if such payment was intended to be compensation and was properly established prior to the commencement of the officers' terms.

Your inquiries relate to an ordinance adopted by a home rule municipality which authorized certain elected municipal officials to receive payments for "transportation assistance". In your letter, you state that the ordinance has been in place since November 2, 1993. The ordinance does not specifically provide that it is applicable only to elected officials whose terms of office commenced more than 180 days after the passage of the ordinance. You further note that, until recently, no elected

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official had received or requested to receive any funds pursuant to the ordinance.

Article VII, section 9(b) of the Illinois Constitution of 1970 provides:

" * * *

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

Section 3.1-50-5 of the Illinois Municipal Code (65 ILCS 5/3.1-50-5 (West 1998)) provides as follows:

"Establishment. All municipal officers, except as otherwise provided, shall receive the salary or other compensation that is fixed by ordinance. Salaries or other compensation shall not be increased or diminished so as to take effect during the term of any officer holding an elective office. The salaries, fees, or other compensation of any appointed municipal officer, not including those appointed to fill vacancies in elective offices, may be increased but not diminished so as to take effect during the term for which the officer was appointed." (Emphasis added.)

Additionally, section 3.1-50-10 of the Code (65 ILCS 5/3.1-50-10 (West 1998)) provides:

"Fixing salaries. The corporate authorities of a municipality may fix the salaries of all municipal officers and employees in the annual appropriation or budget ordinance.

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They may fix the salary of all officers who hold elective office for a definite term in an ordinance other than the appropriation or budget ordinance. The salaries that are fixed in the annual appropriation ordinance shall neither be increased nor diminished during the fiscal year for which the appropriation is made. The salaries that are fixed by ordinance for those officers who hold elective office for a definite term shall neither be increased nor diminished during that term and shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed." (Emphasis added.)

Similarly, section 2 of the Local Government Officer Compensation Act (50 ILCS 145/2 (West 1998)) provides:

"Time of fixing compensation. Notwithstanding any other law to the contrary, the compensation of elected officers of school districts and units of local government, including home rule units, which compensation is to be fixed by that school district or unit of local government, shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed." (Emphasis added.)

Initially, I note that because your inquiry concerns an ordinance that was adopted in 1993, its validity will be judged upon whether it conformed to the constitutional and statutory requirements in effect at that time. In 1993, section 3.1-50-10 of the Illinois Municipal Code (65 ILCS 5/3.1-50-10 (West Supp. 1993)) required that salaries of elected municipal officers be

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fixed at least two months before a general municipal election in which voting was held for those offices, rather than the 180 days currently specified by statute. Moreover, the Local Government Officer Compensation Act (50 ILCS 145/1 et seq. (West 1998)) was added by Public Act 89-405, effective November 8, 1995, and therefore was not in effect when the ordinance was adopted. Consequently, at the time of the adoption of the ordinance in question, the corporate authorities of a municipality could fix the compensation of municipal officers at any time up to two months prior to an election. Since this discussion is also applicable to ordinances adopted after the statutory period was increased, however, I will, for the sake of clarity, refer to the current requirements in the text of this opinion.

Your first question concerns whether an ordinance which increases the compensation of elected municipal officials must specify a date certain or an event upon which the increase is intended to take effect, and whether such an ordinance is void if it fails to provide that the salary increase will not be effective until the commencement of the next term of office occurring not less than 180 days after the ordinance is adopted. Nothing in the provisions cited above suggests that the failure of such

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an ordinance to specify a date or event upon which the increase is to take effect, or to state that the salary increase will not become effective until the next term of office occurring at least 180 days after the ordinance was adopted, is fatally defective. Since the law governing the fixing of compensation necessarily establishes the parameters of the ordinance, its validity is not dependent upon the inclusion of such language. Consequently, it is my opinion that an ordinance of a home rule municipality which increases the compensation of certain elected officials may be given effect in accordance with the pertinent legal requirements and limitations, notwithstanding that the ordinance fails to incorporate them in its text.

You have also inquired whether the payment of funds for "transportation assistance", which was authorized by the 1993 ordinance but not requested or received until the elected officers' current terms of office commenced, would constitute a prohibited increase in the salary or compensation of elected municipal officers. The answer to this question hinges upon whether the transportation assistance payments constitute compensation of the elected municipal officials, and if so, whether the

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ordinance complies with the constitutional and statutory requirements concerning the fixing of compensation.

In DeSutter v. South Moline Township Board (1983), 96 Ill. 2d 372, the court was asked to determine whether the payment of expense allowances in a fixed amount, for which township officers were not required to account, would result in an unconstitutional increase of the officers' salaries during their terms of office. The facts of the case were as follows: on March 1, 1977, the township board set the salaries and expense accounts for the supervisor, clerk and road commissioner to become effective upon the election of the next township board. The election in which the township board and township officers was held on April 15, 1977, and the newly elected officers assumed office on April 25, 1977. On April 11, 1978, the township board adopted a motion which provided that travel expenses were to be itemized and reimbursed at a standard rate per mile. A week later, the board adopted another motion which directed that expenses should be submitted every two weeks and be paid once per month. On October 16, 1979, the township board adopted yet another motion reinstating the original lump sum allowances. The plaintiff

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taxpayers challenged the validity of the October, 1979, motion authorizing the payment of the lump sum allowances.

The court upheld the payment of the fixed expense allowances. Because the pleadings established that the expense allowances were to be paid regardless of whether expenses were actually incurred and without any itemization or accounting, the court determined that they were, in fact, a form of additional compensation. Since the township had enacted the expense allowances before the commencement of the officers' current terms of office, there was no violation of article VII, section 9(b) of the Illinois Constitution of 1970. The court determined that the replacement of the lump sum expense allowances with a system requiring the officers to account for their expenses, however, would have constituted a prohibited reduction in compensation; therefore, the board action in 1979 reinstating the original lump sum allowance provided for in 1977 was permissible because it did nothing more than restore the compensation that had been approved before the commencement of the officers' elected terms of office.

Similarly, in Hume v. Town of Blackberry (1985), 131 Ill. App. 3d 32, township officers were allotted a fixed sum of money for expenses each month without accounting for expenses

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actually incurred. Subsequently, the township board adopted a resolution purporting to clarify the action taken at an earlier meeting by stating that the separate sums for salary and expenses would be combined to provide for total compensation under the single heading of salary. The resolution further provided that in addition to their total compensation now designated as salary, township officials would also be reimbursed for any actual expenses incurred in the performance of their official duties. The plaintiff taxpayers filed suit alleging that the authorization of an expense allowance constituted an improper increase in a township officer's term of office.

The circuit court dismissed the plaintiffs' complaint upon finding that the expense allowances in question were a form of additional salary or compensation of the officials for which they need not account, based upon the decision in DeSutter v. South Moline Township Board. The appellate court, however, reversed the decision because, unlike the circumstances in DeSutter v. South Moline Township Board, it had not been determined that in fixing the salary and expense allowances of the officers, the township board intended to increase the compensa-

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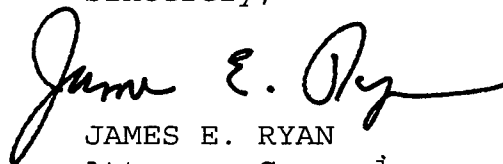
tion that the officers were to be paid regardless of whether expenses were incurred.

Based upon these cases, therefore, the determination of whether the transportation assistance payments in question constitute a form of additional compensation will depend upon whether the expenses were subject to itemization or other accounting; whether the payments were to be paid regardless of the expenses, if any, actually incurred; and, most importantly, whether the payments were actually intended to be additional salary or compensation. Because resolution of this issue necessarily requires a factual determination, in accordance with the longstanding policy of this office (1991 Ill. Att'y Gen. Op. vi; see also 1965 Ill. Att'y Gen. Op. 3) I must decline to comment further upon this aspect of your question. I will note generally, however, that if the transportation assistance payments were intended to be additional compensation, the constitutional and statutory prohibitions against increasing an elected officer's salary during the current term of office would be applicable. Based upon the court's decision in DeSutter v. South Moline Township Board (1983), 96 Ill. 2d 372, if an elected officer's compensation was properly established, then unlawfully changed

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and ultimately reinstated, the reinstatement of the proper compensation would not be violative of article VII, section 9(b). It follows, therefore, that if the transportation assistance payments authorized in 1993 were intended to be additional compensation and were properly established within the pertinent statutory time period prior to the beginning of such officers' terms of office, payment of the transportation assistance would not violate article VII, section 9(b) of the Illinois Constitution of 1970 or the statutory provisions prohibiting an increase in compensation during elected officers' current terms of office. As in DeSutter v. South Moline Township Board (1983), 96 Ill. 2d 372, however, the failure to pay the compensation which was properly fixed within the applicable statutory period before the commencement of their terms of office may have violated the prohibition against decreasing an elected officer's salary during his or her term of office.

Sincerely,

A handwritten signature in cursive script, reading "James E. Ryan". The signature is written in dark ink and is positioned above the typed name and title.

JAMES E. RYAN
Attorney General