

## TGEN POLICY MEMORANDUM 2016 – 01

### Salary Setting for ELECTED TOWNSHIP OFFICIALS AND EMPLOYEES

***DISCLAIMER:** The information contained herein is provided by the Township Officials of Illinois and has been reviewed by legal counsel. It is intended to provide timely general information of interest, but should not be considered a substitute for legal advice.*

There are several limitations on how and when the compensation of elected officials must get determined. For example, the Illinois Constitution provides “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.” The Local Government Compensation Act, 50 ILCS 145/2, also provides the compensation of elected officers of townships must be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed (i.e., the third Monday in May after the election). Failing to set the compensation for the township for each term, could create grounds for an argument that the compensation has not been properly established. Therefore, with no set compensation no payment is authorized.

#### **The following elected or appointed salaries are SET by the TOWNSHIP BOARD:**

- The Township Supervisor
- The Township Clerk
- The Township Assessor
- The Township Trustees
- The Road District Treasurer
- The Highway Commissioner
- Cemetery Trustees

The hiring and dismissal of employees of township board employees (e.g., a Township Administrator, receptionist, finance manager, etc.) are subject to approval of the township board with their rate of pay being approved as well. However, if delegated by resolution to the Supervisor, the Supervisor may manage these administrative functions independently.

The employees of the Road District (Highway Commissioner), general assistance employees hired by the Township Supervisor and the employees of the Assessor are **NOT** subject to township board approval. The independent elected township officials make these administrative decisions.

The township board may, in lieu of a per diem, fix an annual salary for the highway commissioner at not less than \$3,000 to be paid in equal monthly installments (605 ILCS 5/6-207).

It is recommended that highway commissioners that are under a per diem salary scale should be budgeted for an entire 365 days (one year) as they may be called to service for any of these days.

#### **WHO IS SUBJECT TO THE SALARY DISCUSSION**

The Attorney General has stated that even the discussion of the salaries of elected townships officials must be done in an open meeting format. The Open Meetings Act does contain a provision that allows for a closed session to discuss the salary schedules for employees. However, the Attorney General has stated that elected township officials do not fall under the definition of “employee” and thus discussion, deliberation and the final vote on salaries for elected townships officials must be in an open meeting format.

#### **WHEN IS IT REQUIRED TO APPROVE THE SALARY RESOLUTION FOR THE 2017 TERM**

For the 2017 Term of office that takes effect on Monday, May 15 2017, the salaries for the elected officials is November 16, 2016. These salaries are required to be set 180 days prior to the term commencing. There is one exception to this being for Multi Township Assessment Districts, as explained below. For these districts, the salaries must be set by November 5, 2016.

#### **MULTI- TOWNSHIP ASSESSMENT DISTRICTS SALARY DEADLINE**

The salaries for Multi-Township Assessment District ASSESSOR and MTAD Board Members are required to be set 150 days prior the election. In 2017 this date is November 5, 2016.

We suggest that you include all of the benefits that paid to elected officials in the salary resolution to avoid a misunderstanding. This includes, but is not limited to, cell phone bills, insurance, mileage reimbursement, vehicle lease, and others determined by the township/ MULTI Township board.

#### **REGARDING THE ROAD DISTRICT TREASURER**

By state statute, the township supervisor is the designated treasurer of the road district. 60 ILCS 1/65-20 provides that the salary for the road district treasurer shall be at least \$100 and no more than \$1,000 per year. This can be added as additional income to the responsibilities as the Supervisor of the township.

#### **WHICH FUNDS ARE THE SALARIES PAID FROM**

The salary of the supervisor is most commonly paid out of the general town fund. While other arrangements can be made for partial payment of this salary, it is recommended you work with your township attorney on any variations. Employees of the township board are paid out of the town fund salary line item. Employees of the general assistance program are paid out of the general assistance fund and the supervisor is responsible for setting and administering the salary benefits for general assistance employees.

605 ILCS 5/6-207 provides for the highway commissioner he or she shall be paid from the general township fund in districts comprised of a single township and shall be paid from the regular road fund in all other districts having highway commissioners: however, in districts comprised of a single township, a portion (not to exceed 50 percent) of the highway commissioner’s salary may be paid from the corporate road and bridge fund or the permanent road fund if approved by the highway commissioner and the township board.

The Assessor’s budget includes separated funds for employee salaries. The Elected assessor is responsible for setting and administering the salary benefits for employees of the assessor. The assessor’s salary is paid out of the town fund.

#### **INCREASING SALARY AND BENEFITS DURING AN ESTABLISHED TERM**

**No** increase to the fixed salary and benefits assigned to elected township officials is permitted by state law after the salary resolution is adopted for the term. The salary is set for the position of the person. The salary and benefit package is verified by a resolution approved by the township board.

This **DOES NOT** apply to regular employees of the township (non-elected positions). Accordingly, notwithstanding a separate contract or employees covered by a collective bargaining agreement, a township can generally make employee salary changes at any time.

Attorney General Opinion 94-022 issued on October 25, 1994 states that health insurance benefits provided to local elected officials constitutes salary, for the purpose of Article VII, Section 9(b) of the Illinois Constitution. Section 9(b) prohibits any INCREASE or DECREASE in the salary paid of an elected official of any unit of local government that takes effect during the term for which the officer is elected. Accordingly, if health insurance is going to be provided to elected officials, it must be contained within the salary resolution approved at least 180 days prior to the new term. This relates to our general recommendation that any and all benefits that are going to be provided should be included in the salary resolution to avoid any misunderstandings or arguments that a specific benefit cannot be paid.

#### **TRUSTEE'S SALARY**

It is important to note that the wording of the salary resolution needs to state whether or not TRUSTEES are paid per meeting or per month for their service. Additionally, the budget must be able to accommodate a per diem fee structure. This is important to clarify for those townships that have more than one meeting per month and if it is the intention of the board to pay an annual salary or a meeting per diem fee.

#### **CEMETERY TRUSTEES**

The township board may authorize that such cemetery trustees be paid compensation not to exceed \$1,000 per year. The Supervisor is the designated treasurer of cemetery funds but does not receive additional payment for this responsibility.

#### **PAID INSURANCE PREMIUM PAYMENTS IN ADDITION TO SALARY (monthly)**

For those townships that provide health insurance benefits it is important to review the recent changes mandated by the Affordable Care Act in 2015. It is our understanding that some townships provide direct payment of premiums to the health insurance company and others provide a cash payment directly to the elected official monthly in addition to their approved salary. Direct payments to elected officials are no longer permissible under the Affordable Care Act. If provided, insurance premiums must be paid directly to the insurance provider.

As of 2015, payments made directly to elected officials are considered group health plans and are subject to market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventative care without cost sharing. They are subject to payroll taxes.

The employer (township) payment plan made directly to an elected official fails to satisfy the market reforms required under the Affordable Care Act. Additionally, this fails to comply with the annual dollar limitation prohibition of the Affordable Care Act because: (1) the township payment plan is considered to impose an annual limit up to the cost of the individual market coverage purchased through the

arrangement: and (2) an employer payment plan cannot be integrated with any individual health insurance policy purchased under the arrangement.

A violation of these provisions may subject the township to a \$100 per day excise tax per applicable employee. (IRS Notice 2013-54). If your township has questions regarding its payment of health insurance premiums or other compliance questions with the Affordable Care Act, you are encouraged to speak with a professional who works in this area.

**References:** *Township Code 60 ILCS 1/65-20; 87 C.J.S. Section 71; 605 ILCS 5/6-207*

*Article VII, Section 9(b), 1970 Illinois Constitution*

*Attorney General Opinion 99-009; 94-022*

IRS Notice 2013-54