

OPINION NO. 72-054**Syllabus:**

A member of the Public Utilities Commission is a state officer whose salary may not be changed during his existing term of office under Article II, Section 20 of the Constitution of the State of Ohio. He is not an employee within the meaning of Article II, Section 34 of the Constitution.

**To: Henry W. Eckhart, Chairman, Public Utilities Commission of Ohio,
Columbus, Ohio**

By: William J. Brown, Attorney General, July 21, 1972

My opinion has been requested as to whether the salary of any member of the Public Utilities Commission can be raised, in accordance with the new salary bill, during his present term of office.

The salary bill to which reference is made is obviously Amended Substitute Senate Bill No. 147, which was signed by the Governor on January 20, 1971.

The request states that it has been the understanding that the new salary increases for state employees cannot be paid to Public Utilities Commissioners during their present appointed terms. The reference is undoubtedly to Article II, Section 20 of the Constitution of the State of Ohio, which provides as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers, but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

The Supreme Court's consistent interpretation of this language appears from the following paragraph in State, ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253, 257 (1968):

"This has been held to prevent any increase in the compensation paid to such an officer during his term of office. State, ex rel., v. Raine (1892), 49 Ohio St. 580, 31 N.E. 741 (county commissioners); Teale v. Stillinger (1916), 95 Ohio St. 129, 115 N.E. 1010 (county treasurer); Donahey v. State, ex rel. Marshall (1920), 101 Ohio St. 473, 129 N.E. 591 (Public Utilities Commissioner); Jones v. Commrs. of Lucas County (1897), 57 Ohio St. 189, 48 N.E. 882 (county auditor)."

My attention is directed, however, to Article II, Section 34 of the Ohio Constitution, which I cited in a recent Opinion regarding the accrued vacation leave of a state employee (Opinion No. 72-013, Opinions of the Attorney General for 1972), and you ask whether Section 34, supra, in effect negates the prohibition of Section 20, supra, against changes in the salary of a state officer during his existing term.

Section 34, supra, provides as follows:

"Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power."

If the language of this Section could be read as applicable to state officials, the prohibition of Section 20, supra, would be overridden. The history of the adoption of Section 34, supra, however, and the lack of any hint of its application in numerous cases involving state officials, indicate quite clearly that it was intended to govern the rights of employees alone.

Section 34, supra, resulted from the proceedings of the Constitutional Convention of 1912, and the purpose of the Section is manifest from the debate over the recommended proposition. See Vol. 2, Proceedings and Debates, pp. 1328-1338, 1784-1786. The following remarks of Aaron Hahn, Member from Cuyahoga County, are typical (p. 1338):

"There is no doubt that if we do not take preventive measures we are drifting toward a revolution that will be greater and bloodier than any revolution mankind has ever seen. I am no alarmist. I express in a calm way my sentiment and my observation, but I think it is not too late to avert disaster. It is still within our power to prevent such a revolution. The day when the workmen should

despair, the day when the working classes should give up hope, will be the darkest day in the history of our great country, and that must be prevented at all events and indeed it can be prevented. It is within our power to prevent it. The first step toward the prevention of such a great and fatal conflict between labor and capital was taken in this august assembly a few days ago by the adoption of the initiative and referendum to be submitted to the people of Ohio. * * * The initiative and referendum provision is to prevent unrest and revolutions. The next step for us to take is to give the laboring classes justice. Justice is what they want. They do not want charity nor 'welfare work,' but they demand justice. By justice to both the employe and capitalist everything can be settled."

The 1912 Convention also produced other amendments designed to alleviate the condition of the workingman. Among these are Article II, Section 35, Ohio Constitution, which authorizes the passage of laws covering workmen's compensation, and the eight hour work-day provision of Section 37 of the same Article. At the same time, the Convention showed its recognition of the distinction between state officials and employes by providing, in Article II, Section 38, Ohio Constitution, for the removal for misconduct "of all officers, including state officers, judges and members of the general assembly * * *." Sections 34, 35, 37 and 38, supra, all became effective on September 3, 1912.

Furthermore, although the prohibition of Section 20, supra, against an increase in the salary of a state official during his existing term has frequently been before the Supreme Court, it has never been suggested that Section 34, supra, had any application to the question. In 1920, not long after the adoption of Section 34, supra, a previous member of the Public Utilities Commission brought an action for a salary increase, but made no mention of Section 34, supra. Donahey v. State, ex rel. Marshall, 101 Ohio St. 473 (1920). In that case the Supreme Court said (at pp. 475-477):

"It is conceded that the members of the commission are officers and that this section fixes their salary as such officers. The provisions of Section 20, Article II of the Constitution, are comprehensive. Those provisions prohibiting a change affecting 'the salary of any officer during his existing term,' are not limited to officers whose salaries are paid out of the general revenues, but include all officers. The fact that the fund to be used for the maintenance of the department of public utilities commission is created by assessments does not change the fact that the money therein is public money. * * * It is a familiar rule that when a public officer takes office he undertakes to perform all of its duties, although some of them may be called into activity

for the first time by legislation passed after he enters upon his term. As said by Bradbury, J., in Strawn v. Commissioners of Columbiana County, 47 Ohio St., 404, at page 408: "The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for its performance, for the legislature may deem the duties imposed to be fully compensated by the privileges and other emoluments belonging to the office."

See also State, ex rel. Mikus v. Roberts, supra; and State, ex rel. Wallace v. Celina, 29 Ohio St. 2d 109 (1972).

My Opinion No. 72-013, supra, to which reference has been made above, was concerned with the rights, not of a state official, but of an employee, and Section 34, supra, was invoked in answer to an argument that a statutory change in the employee's right to accrued vacation leave was retroactive legislation in violation of Article II, Section 28 of the Constitution. It is clear from the language of State, ex rel. Board v. Board of Trustees, 12 Ohio St. 2d 105 (1967), on which I relied, that the Supreme Court was concerned only with the rights of employees. The Court said (at p. 107):

"There can be no question that the adopters, the people, intended this section of the Constitution [Section 34, Article II] to apply both to local government and state employees. The cities and towns and other political subdivisions of the state of Ohio constitute en masse one of the largest of the employers in the state. It is our conclusion that the firemen and police of the various localities of Ohio are employees within the scope of this provision. It appears in clear, certain and unambiguous language that no other provision of the Constitution may impair the intent, purpose and provisions of the above section of Article II." (Emphasis added.)

It should also be noted that, just seven months later, the Supreme Court decided a case involving the salary of a county officer, but made no mention of Section 34, supra. State, ex rel. Mikus v. Roberts, supra.

From the foregoing it is, therefore, my opinion, and you are so informed, that a member of the Public Utilities Commission is a state officer whose salary may not be changed during his existing term of office under Article II, Section 20 of the Constitution of the State of Ohio, and that he is not an employee within the meaning of Article II, Section 34 of the Constitution.