

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3240 was overruled by
1983 Op. Att'y Gen. No. 83-036.

3240

THE SALARY OF A MEMBER OF A STATUTORY MUNICIPAL CIVIL SERVICE COMMISSION MAY NOT HAVE HIS SALARY INCREASED DURING HIS TERM OF OFFICE; HOWEVER, THE CLERK OF SUCH A COMMISSION MAY HAVE AN INCREASE IN SALARY—§143.30, Revised Code.

SYLLABUS:

The salary of a member of the civil service commission of a city operating under a statutory plan of municipal government is subject to the provisions of Section 731.07, Revised Code, and may not be increased during his term of office; however, the salary of the clerk of such commission is not subject to the provisions of such section and accordingly may be increased at any time.

Columbus, Ohio, August 30, 1962

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The City of Marion, Ohio, presently has a Municipal Civil Service Commission appointed pursuant to R. C. 143.30 and allied sections prior to the latest amended R. C. 143.30. It is

anticipated that if the statutes of Ohio as regards Civil Service are fully complied with by the City that the duties and responsibilities of the present Civil Service Commission will be immediately increased. The City of Marion does not operate under a charter but is under the statutory plan of government.

“The City desires to immediately, in view of the increased duties, grant a raise in compensation to the three members of the Commission and the clerk. The City is cognizant of R. C. 731.07.

“Query: May a non charter city (Marion, Ohio) increase the salary to be paid to the individual members and the clerk of its Municipal Civil Service Commission during the terms of the members and the employment of the clerk?”

Section 143.30, Revised Code, provides in pertinent part:

“The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years, and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district and city health district in which such city is located. Each alternate year thereafter the mayor or other chief appointing authority shall appoint one person, as successor of the member whose term expires, to serve six years. A vacancy shall be filled by the mayor or other chief appointing authority of a city for the unexpired term. * * *

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It is to be noted that under Section 143.30, *supra*, the mayor or other appointing authority of a city appoints three persons to serve as members of a municipal civil service commission, a bi-partisan body, each of whose term of office, after the preliminary period in the life of such commission has run its course, is fixed at six years. In case of vacancy, a successor is appointed by the same authority for the unexpired term. Although the members of the municipal civil service commission also have duties pertaining to other political subdivisions, the city school and health districts, I am of the opinion that said members are officers of the municipal corporation.

In this regard, I note that the expense and salaries of the municipal civil service commission are, under Section 143.30, *supra*, paid by the city.

Section 731.07, Revised Code, provides in part:

“The salary of any officer, clerk or employee of a city shall not be increased or diminished during the term for which he was elected or appointed.

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It is quite apparent that a member of the civil service commission of a city, once appointed, does not serve at the pleasure of the appointive authority but continues in office for his full term unless he dies, resigns, or is removed for cause. The situation here is different from one discussed and ruled upon in Opinion No. 3143, Opinions of the Attorney General for 1962, issued on July 13, 1962, where it was determined that the salary of a director of service and safety of a city operating under the statutory plan of municipal government may be increased or decreased in view of the fact that such director, although appointed by the mayor, serves at his pleasure, and, therefore, his appointment is not for a "term" within the meaning of Section 731.07, Revised Code. In point with the instant situation is *Village of Newcomerstown v. State ex rel. Blatt*, 36 Ohio App., 434, where it is stated in headnote 1:

"Any elective or appointive officer, properly qualified and serving, is such officer until removed or office becomes vacant by operation of law."

And in headnote 6 of the same case:

"Officer accepts office on basis of law at time of election or appointment (Sections 4213 and 4219, General Code)."

Your attention is also directed to 37 American Jurisprudence, Section 257, page 880, where it is stated:

"* * * The compensations for official services are not fixed upon any mere principle of quantum meruit, but upon the judgment and consideration of the legislature or municipal legislative body, as a just medium for the services which the officer may be called upon to perform. These compensations may in many cases be extravagant for the specific services performed, while in others they may furnish a remuneration which is wholly inadequate. The time and occasion may, from change of circumstances, render the service onerous and oppressive, and the legislature or municipal legislative body may also increase the duties to any extent it chooses, but nothing additional to the statutory reward may be claimed by the officer or employee, however disproportionate to the value of his services it may be. * * *"

The clerk mentioned in your letter, I assume, is the clerk of the municipal civil service commission appointed by virtue of authority of Section 143.30, Revised Code, where all powers conferred upon the director of state personnel, under Section 143.04, Revised Code, with respect

to the civil service of the state, are granted to such commission with respect to the civil service of the municipality. I find no statute fixing the term of such clerk and the person serving as clerk would appear to be only an employee of the commission. I am, therefore, of the opinion that the compensation of the clerk of a municipal civil service commission may be increased at any time.

Summarizing the foregoing, it is my opinion and you are advised that the salary of a member of the civil service commission of a city operating under a statutory plan of municipal government is subject to the provisions of Section 731.07, Revised Code, and may not be increased during his term of office; however, the salary of the clerk of such commission is not subject to the provisions of such section and accordingly may be increased at any time.

Respectfully,

MARK McELROY

Attorney General