

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3027 was overruled
by 1962 Op. Att'y Gen. No. 62-3143.

3027

THE LEGISLATIVE AUTHORITY OF A CITY MAY NOT INCREASE THE SALARY OF A PERSON SERVING AS DIRECTOR OF SERVICE OR SAFETY DURING SAID PERSON'S TERM OF OFFICE—§731.07, R.C., OPINION 4322 OAG 1954.

SYLLABUS:

Because of the prohibition of Section 731.07, Revised Code, the legislative authority of a city, which operates under the statutory plan of municipal government, may not increase the salary of the person serving as director of service and safety of the city during said person's term of office. (Opinion No. 4322, Opinions of the Attorney General for 1954, page 498, approved and followed.)

Columbus, Ohio, May 26, 1962

Hon. E. Raymond Morehart, Prosecuting Attorney
Fairfield County, Lancaster, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I respectfully request your opinion and answer regarding the following question: May council of a municipality which operates under the general statutory form of government increase the salary of the Service-Safety Director during his term of office?"

Section 735.01, Revised Code, provides that each city shall have a director of public service, and Section 737.01, Revised Code, provides that each city shall have a director of public safety. Section 733.03, Revised Code, provides, however, that the legislative authority of a city may merge the two offices into one department, with one director for the department. I assume that such a merger has been accomplished in the instant case.

The salaries of city officers are set by the legislative authority of the city (Section 731.08, Revised Code). As to an increase in salary during term, such is barred by Section 731.07, Revised Code, which reads in pertinent part as follows:

"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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* * *"

Regarding said Section 731.07, the question arises as to whether it might be considered to be in conflict with the constitutional home-rule powers of municipal corporations. This aspect was considered in Opinion No. 4322, Opinions of the Attorney General for 1954, page 498, in which the third and fourth paragraphs of the syllabus read:

"3. Statutory provisions fixing the salaries of municipal officers and employes, or prescribing limits within which changes in such salaries may be made, relate to the form or structure of the several statutory plans of municipal government for which the General Assembly has made provision by law as authorized by Section 2, Article XVIII, Ohio Constitution. Immunity from

such limiting provisions may be achieved by municipal corporations by the adoption of a charter establishing a form or structure of municipal government at variance with such statutory plans; but such limiting provisions apply to municipal corporations which have elected, by failure to adopt a charter, to operate under a statutory plan of municipal government.

“4. Where a city or village charter confers full authority on the municipal council to fix the compensation of the municipal officers and employes such legislative authority may be exercised without regard to the provisions of Sections 731.07 and 731.13, Revised Code; *but such statutory provisions are controlling in the case of the council of a city or village which operates under a statutory plan of municipal government.*” (Emphasis added)

Beginning at page 506 of the 1954 opinion, it is stated:

“It is my opinion, however, that the power of municipal legislative authority to legislate on the subject of salaries paid to municipal officers is so related to the legislative office that a statutory limitation thereon may be said to be a part of the *form* of government of the municipality concerned.

“Here it is proper again to point out the distinction between the ‘powers of local self-government,’ enjoyed by all municipal corporations, and the power to select the form or mode of government through which such powers may be exercised. Such ‘powers of local self-government’ are conferred, not on any one or more of the officers or branches of the municipal government, but on the municipal corporation as such. Thus while all such corporations have the same basic home-rule powers, regardless of whether they have adopted a charter, it does not follow that the *officers* of such corporations have the same power. *Perrysburg v. Ridgway, supra.*”

“In the absence of a charter we must look to the statute for the power of the several municipal officers, for where the municipality concerned has chosen not to adopt a charter, and has thus elected to operate under a statutory plan of municipal government, it must accept such limitations on the powers of its officers, including its legislative authority, as is provided in such statutory plan.

“In this connection it is a matter of some significance that the limitations set out in Sections 731.07 and 731.13, *supra*, are found in the municipal code in a chapter entitled ‘Organization,’ a circumstance indicative of the notion that the limitations thereon stated constitute a part of the statutory form of municipal government.

“As pointed out by the court in the *Ridgway* case, *supra*, a charter is a vehicle by which the people of a municipality may

choose and establish a *form* of government different from that authorized by statute; and I conclude, therefore, that by charter provision a municipality could avoid the effect of the statutes here in question. A non-charter municipality, being limited to one of the statutory plans as to the *form* of government, must accept as a part thereof the limitations of the statutes here in question. Accordingly, while I am in agreement with the conclusion stated in the 1934 opinion in its application to non-charter municipalities, I cannot agree that it would apply where a conflicting charter provision is involved.”

On reviewing the reasoning of the 1954 opinion and court decisions rendered since the issuance of that opinion, I am in agreement with the conclusions reached by my predecessor, and feel that said reasoning should be applied to the instant question.

Accordingly, it is my opinion and you are advised that because of the prohibition of Section 731.07, Revised Code, the legislative authority of a city, which operates under the statutory plan of municipal government, may not increase the salary of the person serving as director of service and safety of the city during said person's term of office. (Opinion No. 4322, Opinions of the Attorney General for 1954, page 498, approved and followed.)

Respectfully,

MARK McELROY

Attorney General