

OPINION NO. 84-057**Syllabus:**

Pursuant to Section 3.02 of Article III of the Charter of the County of Summit, a member of the county council who holds office when an ordinance changing the salary of council members is enacted will not be eligible to receive an increase in salary until the term for which he serves at the time of enactment of the ordinance has expired.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 18, 1984

I have before me your request for an opinion concerning the provisions of the Charter of the County of Summit which deal with increases in compensation for members of the county council. Under Section 3.01 of Article III of the Summit County charter, the county council consists of seven members who are elected at large to serve four-year terms. They are nominated at primary elections and elected in regular state elections in even-numbered years. See generally R.C. 350L01(C), (E); R.C. 350L02. Terms are staggered so that, except as otherwise required to fill vacancies, either three or four council members will be elected in each even-numbered year. Terms begin on the first day of January following the election.

With respect to salaries, Section 3.02 of Article III of the charter states: "The salaries of County Council members shall be \$7,000 per year. They may be changed by ordinance at any time before a primary election for members of the County Council, but no change shall be effective until the commencement of the ensuing term." You have described a situation in which an ordinance is enacted prior to a primary election for members of the county council. The ordinance would grant an increase in salary to county council members, effective January first of the year following the election. Your question is whether members who serve on the council when the ordinance is passed but whose offices are not up for election in the year of that primary election may receive raises as of January first of the year following the election.

The Summit County charter was recently adopted, and I am aware of no court cases construing the language in question. Thus, I turn to the ordinary meaning of the language used. See generally Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). Section 3.02 of Article III of the charter states that "no change [in salary] shall be effective until the commencement of the ensuing term." "Ensnue" is generally defined as meaning "to come afterward; follow immediately," with the connotation that what follows comes as a logical consequence of what preceded. Webster's New World Dictionary 466, 542 (2d college ed. 1978) (see definition of "follow"). It is clear that, with respect to a council member whose office is up for election during the year of the primary election, the "ensuing term" is the term which immediately follows his—that is, the term which begins on the following January first.

It might be argued that the same result should be reached for all council members—that is, that the words, "the ensuing term," should be read as referring to the next term of any council member to commence after the primary election. Under this interpretation, all council members would be eligible to receive an increase in salary at the time the next term of any council member began, provided that the term began after the primary election (or, in the case of the ordinance you have described, on or after January first). I believe, however, that the better reading of the language is that the words "the ensuing term" apply to the term of each council member, as follows: "no change shall be effective [for a council member] until the commencement of the ensuing term [of that council member, or his successor]." The logical chain of events is that one term is followed by an ensuing term. When terms are staggered so that they do not all begin at the same time, it cannot fairly be stated that a primary election is followed by a single ensuing term; rather, a primary election is followed by an election at which successors to some of the council members are chosen.

Under the interpretation outlined above, a council member who holds office when an ordinance changing the salaries of council members is enacted will not be eligible to receive an increase in salary until the term for which he serves at the time of passage of the ordinance has expired and the succeeding term has begun. See generally City of Parma Heights v. Schroeder, 26 Ohio Op. 2d 119, 196 N.E.2d 813 (C.P. Cuyahoga County 1963) (construing municipal charter provision which provided that salaries for elected officials shall be fixed at least one hundred twenty days prior to the election for terms beginning on January first and shall not thereafter be changed in respect to any such term or terms or any part thereof); 1983 Op. Att'y Gen. No. 83-015; 1980 Op. Att'y Gen. 80-048. I find support for this construction in the fact that Section 2.02 of Article II of the Summit County charter contains similar language relating to the salary of the county executive: "It may be changed by ordinance at any time before a primary election for County Executive, but no change shall be effective until the commencement of the ensuing term." The county executive is clearly prohibited by Section 2.02 of Article II from receiving an increase in salary during the term in which such increase is enacted. In interpreting Section 3.02 of Article III as prohibiting all council members from receiving in-term increases in compensation, the Summit County charter is rendered internally consistent in that it prohibits the granting of in-term increases in salaries to those elected officials whose compensation is governed solely by the charter. Cf. Charter of the County of Summit art. IV, §4.01 ("[t]he Auditor, Treasurer, Clerk of the Court of Common Pleas, Coroner, County Engineer, Prosecuting Attorney, Recorder and Sheriff of the County shall be elected and their salaries and duties shall continue to be determined in the manner provided by general law. . .").

I note that the result reached above is consistent with the general rule set forth in Ohio Const. art. II, §20: "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." It appears, however, that, by virtue of the adoption

of its charter, Summit County is not subject to this constitutional prohibition.¹ See Ohio Const. art. X, §3 (authorizing the people of a county to adopt a charter providing the form of government of the county and providing for the concurrent exercise of powers vested in municipalities by the Ohio Constitution or by general law); Ohio Const. art. XVIII, §3 (conferring powers of local self-government on all municipalities); Charter of the County of Summit art. I, §1.01 (providing that the county may exercise all powers granted to counties, including the concurrent exercise of "all or any powers vested in municipalities by the Ohio Constitution or by general law"); Blacker v. Wiethe, 16 Ohio St. 2d 65, 69, 242 N.E.2d 655, 657 (1968) ("[t]he government of a county necessarily includes the power to fix the salary of its officers"); City of Mansfield v. Endly, 38 Ohio App. 528, 176 N.E. 462 (Richland County), aff'd, 124 Ohio St. 652, 181 N.E. 886 (1931) (since the compensation of municipal officers is "provided for" by the terms of Ohio Const. art. XVIII, §3, municipal officers are not officers within the scope of Ohio Const. art. II, §20); Loux v. City of Lakewood, 120 Ohio App. 415, 193 N.E.2d 710 (Cuyahoga County 1963), appeal dismissed, 176 Ohio St. 154, 198 N.E.2d 68 (1964) (holding that the enactment, pursuant to city charter, of a municipal ordinance which provided in-term increases in the salaries of city council members did not violate Ohio Const. art. II, §20). Cf. State ex rel. DeChant v. Kelsner, 133 Ohio St. 429, 14 N.E.2d 350 (1938) (Ohio Const. art. II, §20 prevents commissioner of a noncharter county from receiving an increase in compensation during his term of office). See generally 1983 Op. Att'y Gen. No. 83-036; 1980 Op. Att'y Gen. No. 80-002 (overruled in part by Op. No. 83-036 and by 1981 Op. Att'y Gen. No. 81-099).

I note, further, that the interpretation adopted herein serves to promote the purpose served by similar language in constitutional and statutory provisions—that an officeholder should be prohibited from using his official powers to promote his personal benefit. See, e.g., Ohio Const. art. II, §31 (prohibits changes in compensation of members and officers of the General Assembly during their terms of office); Ohio Const. art. III, §19 (prohibits changes in compensation of state executive officers during their terms of office); R.C. 731.07 (prohibits changes in the salary of an officer of a city during his term of office); State ex rel. Mack v. Guckenberger, 139 Ohio St. 273, 39 N.E.2d 840 (1942); Op. No. 83-015; 1983 Op. Att'y Gen. No. 83-004; Op. No. 80-002 (overruled in part by Op. No. 83-036 and by 1981 Op. Att'y Gen. No. 81-099). See also Schultz v. Garrett, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983).

It is, therefore, my opinion, and you are hereby advised, that, pursuant to Section 3.02 of Article III of the Charter of the County of Summit, a member of the county council who holds office when an ordinance changing the salary of council members is enacted will not be eligible to receive an increase in salary until the term for which he serves at the time of enactment of the ordinance has expired.

¹ Because Section 4.01 of Article IV of the Summit County charter has provided that the compensation of the county officers named therein "shall continue to be determined in the manner provided by general law," those officers are prohibited by Ohio Const. art. II, §20 from receiving in-term increases in compensation.