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SPRINGFIELD

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FILE NO. S-1122

COMPENSATION:

**Increase in Compensation of
Township Supervisor Acting as
Supervisor of General Assistance**

Frank A. Kirk, Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706

Dear Director Kirk:

I have your letter requesting my opinion as to whether a township supervisor who is ex officio supervisor of general assistance for his township may receive an increase in compensation during his term for his services as supervisor of general assistance. In my opinion, the answer to your question is No.

A township supervisor is ex officio supervisor of general assistance pursuant to section 12-21.2 of the Illinois Public Aid Code (Ill. Rev. Stat. 1975, ch. 23, par. 12-21.2),

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and section 5 of article XIV of "AN ACT to authorize county boards, etc.". Ill. Rev. Stat. 1975, ch. 139, par. 131.

The only statutory provision concerning the salary of a township supervisor is in section 17 of article XIII of "AN ACT to revise the law in relation to township organization". (Ill. Rev. Stat. 1975, ch. 139, par. 126.7.) It provides in part as follows:

"On or before the last Tuesday of March immediately preceding the election of township officers, the board of town auditors shall establish the compensation to be paid each township officer elected at that election, including the Road District Treasurer, whose compensation shall be not less than \$100.00 or more than \$1,000.00 per year."

Section 9(b) of article VII of the Constitution provides that:

"(b) 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."

Under these provisions the salary of the township supervisor may only be changed on or before the last Tuesday of March immediately preceding the election of the township supervisor. It is effective for the supervisor elected, not the one currently in office.

In his opinion No. UP-1420, issued August 25, 1965,

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my predecessor considered substantially the same question you raise and concluded that such a salary change was permissible. The basis for his decision was the opinion of the Illinois Supreme Court in People ex rel. Ruesch v. Hire, 406 Ill. 341. The court held there that the "overseer of the poor" was not an "officer". Since "overseer of the poor" was the title formerly given the supervisor of general assistance, my predecessor concluded that the holding in the Hire case applied to the compensation paid the supervisor of general assistance and that his salary could be changed.

Both the decision of the court and the opinion of my predecessor were rendered at a time when the law provided specifically for the setting of compensation by the board of town auditors for the township supervisor when attending his duties as general assistance supervisor or overseer of the poor. Section 36.1 of "AN ACT concerning fees and salaries, etc." (Ill. Rev. Stat. 1969, ch. 53, par. 55.1) provided in part:

"* * * When the supervisors are attending to their duties as general assistance supervisors, however, or when serving as members of the Public Aid Committee in counties in which the governing authority is a Board of Commissioners as provided in Section 11-8 of 'The Illinois Public Aid Code', enacted by the 75th General

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Assembly, they shall be regarded as town officers, and their compensation for services as general assistance supervisors, and the per diem compensation and expenses of supervisors serving as members of such Public Aid Committee, shall be fixed by the board of town auditors and paid out of the town fund, and a tax levy shall be made to cover that compensation at the annual town meeting. The town supervisor shall be allowed one day's pay for his services in posting notices of elections."

This provision was repealed by Public Act 77-1611 which also enacted the current provision in "AN ACT in relation to township organization" cited above.

It is well established that when the township supervisor performs the duties of supervisor of general assistance he is only fulfilling one of his duties as supervisor and not holding a separate office. The Supreme Court in The People v. Smith, 226 Ill. 64, 67 stated:

" * * * Overseer of the poor [supervisor of general assistance] is not an office, but the duty of caring for the poor is by law made one of the duties to be performed by the supervisor by virtue of his office as such supervisor. The statute providing for the relief of a supervisor, at his request, from the duties of overseer of the poor does not contemplate a resignation of an office but simply relief from certain duties. The office to which the duties of overseer of the poor attaches is that of supervisor, and the only duty of that office that the incumbent may be relieved of, upon his request, is that of overseer of the poor. Asking to be relieved of those duties is not a resignation of any office. * * * "

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Section 12-21.10 of the Illinois Public Aid Code (Ill. Rev. Stat. 1975, ch. 23, par. 12-21.10) provides that in townships containing more than 4,000 inhabitants, a township supervisor may be relieved of his duties as supervisor of general assistance and a person appointed to assume those duties. The board of town auditors is then authorized to set compensation for the performance of these duties. This is not authority for the board to compensate a township supervisor separately for performance of these duties. Whether he will be performing these duties is but one factor to be considered in setting his compensation under section 17 of article XIII of "AN ACT to revise the law in relation to township organization".

It is therefore my opinion that a township supervisor who is ex officio supervisor of general assistance may not receive an increase in compensation during his term for his services as supervisor of general assistance.

Very truly yours,

A T T O R N E Y G E N E R A L