



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

December 5, 1975

FILE NO. S-1006

**CONSTITUTION:
Salaries of County Officers
Cost of Living Adjustments**

Honorable William K. O'Connor
State's Attorney
Henry County
Cambridge, Illinois 61238

Dear Mr. O'Connor:

By your letter you requested clarification of my
Opinion No. S-777, dated June 18, 1974, in its application to a
cost of living formula adopted by the County Board of Henry
County with respect to the review and adjustment of salaries
of elected officials whose terms of office will begin in the
future. In your letter you state:

"In Henry County on October 1, 1974, a resolution
was passed authorizing a future increase in salaries
for certain elected officers with such increase being
established on a cost of living graduated salary

Honorable William K. O'Connor - 2.

schedule. The County Board of Henry County will shortly pass an appropriation ordinance for the ensuing fiscal year commencing December 1st. They have included a cost of living raise for certain elected officials.

My question is - is this ordinance based on a cost of living formula rather than on a graduated pre-set monetary raise proper and in order?"

You enclosed with your letter a copy of a resolution dated October 1, 1974, the pertinent provisions of which read as follows:

"NOW BE IT THEREFORE RESOLVED BY THE COUNTY BOARD OF THE COUNTY OF HENRY, ILLINOIS, as follows: The County Board of Henry County shall at any time during the fiscal year of any year hereafter, have the authority to review the salary of any elected County Officer whose salary is based on a graduated scale, and shall have the further authority to increase said salary in accordance with any increases in the cost of living as disclosed by reference to any objectively determinable standard promulgated by the United States government for the purpose of reflecting increases in the cost of living. Such increases as may be authorized shall take effect immediately upon said authorization and in no event shall such increases exceed the increase of cost of living as set forth in the United States government figures, nor shall such increase cause the total salary of the elected officer to exceed the otherwise applicable maximum salary limitations imposed by law. Salary review and cost of living increases authorized, hereby shall apply prospectively to County Officers elected to Office after the effective date hereof only, and shall not be applied during the current

Honorable William K. O'Connor - 3.

term of office of any existing County Officer."

Section 9(b) of article VII of the Illinois

Constitution of 1970 reads as follows:

"(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."

There appeared in the Constitution of 1870 a provision comparable to section 9(b) of article VII of the present Constitution. Section 11 of article IX of the 1870 Constitution read in part as follows:

"* * * The fee, salary, or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be decreased or diminished during such term."

Prior to the adoption of the 1970 Constitution, I had occasion to publish two opinions each of which involved a construction of section 11 of article IX. In Opinion No. S-160, dated April 27, 1970, (1970 Ill. Att'y. Gen. Op. 86), I advised the state's attorney of Peoria County that a graduated salary could be established for the office of county superintendent

Honorable William K. O'Connor - 4.

of highways in advance of the new term and that there was no constitutional requirement that the salary had to be fixed at a flat annual rate for the new term. Similarly, in Opinion No. S-311, dated June 23, 1971, (1971 Ill. Att'y. Gen. Op. 61), I advised that the salary of the supervisor of assessments could be increased or diminished during his term pursuant to a change in population as long as the population scale was fixed prior to the start of the term. In both cases the formula providing graduation was fixed and automatically operative.

As you have noted, I dealt with a similar plan in Opinion No. S-777, dated June 18, 1974. There the question considered was whether under section 9(b) of article VII of the Illinois Constitution of 1970 the reasoning followed in my Opinions No. S-160 and No. S-311, above referred to, under the prior Constitution remained valid. I stated that the changes brought about by section 9(b) of article VII of the new Constitution, vis-a-vis section 11 of article IX of the prior Constitution, pertained to coverage and manner of selection of officers. Thus, section 9(b) governed only elected officers

Honorable William K. O'Connor - 5.

while section 11 governed both elected and appointed officers; also section 9(b) encompasses officers of units of local government while old section 11 encompassed only municipal officers.

Stating my continued reliance on Brissenden v.

Howlett, 30 Ill. 2d 247, and related cases hereinafter discussed,

I concluded Opinion No. S-777 as follows:

"I am of the opinion that the salary of an elected officer of a unit of local government need not be fixed at a flat annual rate for the entire term; the salary may be established on a graduated basis prior to the beginning of the term for which that officer is elected. If the statutes provide a graduated salary scale based on population, the salary of an elected officer of a unit of local government may be changed during his term if the population of the unit of local government changes during such term. This assumes that the statute in question was adopted prior to the beginning of the officer's term. It is also understood that any determination of a population change would be made by reference to an objectively determinable and extraneous event such as the federal census."
(emphasis added.)

While it appears from the resolution adopted October 1, 1974, by the County Board of Henry County that salary reviews and cost of living increases shall apply only prospectively to county officers elected after the effective date of the resolution, the salary increases are not self-operative but in

Honorable William K. O'Connor - 6.

the future depend upon discretionary action of the board. Furthermore, the discretion would extend to allowing or disallowing costs of living adjustments to particular county officers.

In my considered opinion, this discretionary aspect of the ordinance runs counter to the reasoning underlying the prior Attorney General rulings to which I have referred and contravenes the purpose of the constitutional prohibition set forth in section 9(b) of article VII of the Illinois Constitution of 1970.

In Brissenden v. Howlett, supra, the Supreme Court of Illinois upheld, against attack under section 11 of article IX of the 1870 Constitution, a statute which provided that the compensation of county superintendents of schools was to be based upon a county's population. The court noted that in a majority of jurisdictions considering the question changes in the amount of money received by an elected official brought about by a change of population or a change in the assessed valuation of property of a particular government, would not

Honorable William K. O'Connor - 7.

violate a constitutional prohibition against changing the salary of the elected official during his term of office.

Referring to People ex rel. Holdom v. Sweitzer, 280 Ill.

432, 442, the Supreme Court quoted from that decision to show the purpose of the constitutional prohibition saying:

"The acts of the officers of each branch, while such officers are in power, should not be made to depend upon or be influenced by the acts of another branch, nor should there by anything in the conduct of either that would even give rise to a suspicion of such a thing as coercion by reducing salaries or a reciprocal interchange of favors by increasing salaries, hence the reason for the constitutional provision putting it beyond the power of the Legislature to increase or diminish the salaries of state officers in office and in power."

Earlier in People ex rel. MacDavid v. Barrett, 370 Ill.

478, 480, the court had said:

"Section 16 of Article VI prohibits the increase of a circuit judge's salary during his incumbency, or his receiving any other compensation, perquisite or benefit in any form. Section 19 of Article IV prohibits the granting of any extra compensation to any public officer, agent, servant or contractor, after service has been rendered or contract made. The purpose of these constitutional provisions is obvious. Temptation of a public official, through pressure or persuasion or because of gratitude, to favor parties or individuals procuring or promoting a legislative increase of his salary, is removed from the incumbent's path." (emphasis added.)

Honorable William K. O'Connor - 8.

Similarly in their distinguished work, Illinois Constitution: An Annotated and Comparative Analysis (1969), prepared for the use of the delegates to the Sixth Illinois Constitutional Convention, Braden and Cohn at page 476 observed as follows:

"There are two simple principles involved in this increase or decrease in salary business, but in the welter of litigation the principles sometimes seem to be forgotten. One principle is that the man who determines the amount of a salary should not be allowed to use that power to influence someone who is not responsible to him. * * *

Where compensation is set by a legislative body for executive and administrative officials, the principle is applicable to any officials who are elected by the voters, for under the theory of separation of powers, the fact of election means that they are supposed to be independent of the legislature.

* * *

The second principle is that a man ought not to be able to increase his own salary. Thus it is appropriate to prohibit those people who make appropriations - legislators, supervisors, commissioners, councilmen, aldermen - from increasing their own salaries during the term for which they are elected."

While the cited decisions of the Supreme Court would appear to permit self-executing cost of living increases made by

Honorable William K. O'Connor - 9.

reference to objectively determinable and extraneous standards, such as Federal indices, it is equally clear that they render impermissible and unlawful salary increases involving discretionary action by the county board. It will be noted that the resolution of October 1, 1974, does not require automatic cost of living adjustment in the case of all county officers' salaries. Instead, it authorized board review and increases within the constraints of established cost of living changes and overall limits imposed by law, as the county board shall choose to make. An increase may be granted or denied in the board's discretion to one or more county officers. Thus, the standard of change is subjective and not comparable in nature to the fixed adjustment factors upheld in the Brissenden case and in my Opinions No. S-160, No. S-311, and No. S-777. I, therefore, advise you that the ordinance is invalid and salary increases made pursuant to it would violate section 9(b) of article VII of the Constitution.

Very truly yours,

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