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STATE OF MICHIGAN

**MIKE COX, ATTORNEY GENERAL**

COUNTIES: Authority of county board of commissioners to  
reduce appointed county treasurer's salary during  
PUBLIC OFFICES AND OFFICERS: term of office

A county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term. The statutory prohibition applies regardless of whether the person was elected or appointed to that term of office.

Opinion No. 7128

April 7, 2003

Honorable Patricia Birkholz  
State Senator  
The Capitol  
Lansing, Michigan

Honorable Fulton J. Sheen  
State Representative  
The Capitol  
Lansing, Michigan

You ask if a county board of commissioners may reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term.

Const 1963, art 7, § 9, addresses the compensation of county officers and provides as follows:

Boards of supervisors shall have *exclusive power* to fix the compensation of county officers *not otherwise provided by law*. [Emphasis added.]

The Legislature has also addressed the compensation of county officers. Section 1(1) of 1879 PA 154,<sup>1</sup> as amended, MCL 45.421(1), the Salaries of County Officers Act (Act), provides as follows:

The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and *shall not be diminished during the term for which the county officer has been elected or appointed*, but may be increased during the officer's term of office. [Emphasis added.]

Constitutional and statutory provisions are to be construed according to their plain meaning. *People v Bulger*, 462 Mich 495, 507; 614 NW2d 103 (2000) ("[T]he primary source for ascertaining [a constitutional provision's] meaning is to examine its plain meaning as understood by its ratifiers at the time of adoption"); *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001) ("If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written").

The phrase "not otherwise provided by law" in Const 1963, art 7, § 9, means that a county board of commissioners may set the salary of county officers, subject to any compensation provisions that have been adopted as law by the Legislature, such as MCL 45.421. See OAG, 1997-1998, No 6941, p 38, 39 (June 13, 1997).

In *Attorney General v Oakland County*, 125 Mich App 157, 158-159; 335 NW2d 654 (1983), the Court recognized that under the

Act, the county board of commissioners has considerable latitude in establishing the compensation of county officers. MCL 45.421, to the extent that it prohibits a county board of commissioners from decreasing the salary of a county officer during his or her term, is consistent with the Legislature's power to provide by law for the compensation of county officers. OAG, 1997-1998, No 6941, *supra*, at p 39.

Furthermore, the prohibition in MCL 45.421 against a county board of commissioners decreasing a county officer's salary during his or her term is not limited to the person who was elected to the office. This is because MCL 45.421 expressly provides that such a prohibition applies to the "term" of office and not the officer personally. Thus, a "term" is not personal to the officer but rather refers to the office.

The validity of the foregoing conclusion is underscored by reference to MCL 168.203 and MCL 168.209. MCL 168.203, which defines the term of office of a county treasurer, provides:

The *term of office* of the . . . county treasurer, . . . shall begin on January 1 next following the election, and continues until a successor is elected and qualified . . . [Emphasis added.]

MCL 168.209, which sets forth the manner of filling a vacancy of the term of a county treasurer, provides:

If a vacancy occurs in an elective or appointive county *office*, it shall be filled in the following manner:

\* \* \*

(2) If the vacancy is in any other county *office*, the presiding or senior judge of probate, the county clerk, and the prosecuting attorney shall appoint a suitable person to fill the vacancy.

(3) *A person appointed shall take and subscribe to the oath as provided in section 1 of article XI of the state constitution of 1963, give bond in the manner required by law, and hold office for the remainder of the unexpired term and until a successor is elected and qualified. However, if the next general November election is to be held more than 182 days after the vacancy occurs, and it is not the general November election at which a successor in office would be elected if there were no vacancy, the person appointed shall hold office only until a successor is elected at the next general November election in the manner provided by law and qualifies for office. The successor shall hold the office for the remainder of the unexpired term.* [Emphasis added.]

Finally, although not dealing specifically with the Act in question here, the Michigan Supreme Court in *Hawkins v Voisine*, 292 Mich 357, 359; 290 NW 827 (1940), held that a person whose entitlement to the office of village president was not decided until after the term had expired was nevertheless entitled to the salary, explaining: "An official salary is not made dependent upon the amount of work done, but belongs to the office itself without regard to the personal service of the officer." (Citations omitted.)

It is my opinion, therefore, that a county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term. The statutory prohibition applies regardless of whether the person was elected or appointed to that term of office.

MIKE COX  
Attorney General

<sup>1</sup>Section 1(2) provides an exception for counties that have a county officers compensation commission:

Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation of each nonjudicial elected officer of the county shall be determined by that commission. A change in compensation for those officers of a county which has a county officers compensation commission shall commence at the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected. [MCL 45.421(2).]

Because your question relates to salaries fixed by the county board of commissioners under section 1(1), this opinion does not address compensation set under section 1(2).

State of Michigan, Department of Attorney General  
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