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October 15, 2003

Opinion No. 03-138

Compensation and Salaries of City Commissioners

QUESTIONS

1. Under Tenn. Code Ann. § 6-20-204(c)(1), what, if any, criminal offense is committed when the board of commissioners increases the salaries of commissioners prior to the end of the term for which the commissioners were elected?

2. Does an individual commissioner commit a criminal offense each time he or she receives a monthly payment in violation of Tenn. Code Ann. § 6-20-204(c)(1).

OPINION

No criminal offense is committed under Tenn. Code Ann. § 6-20-204, but a violation of the terms of subsection (c)(1), if made effective by a two-thirds (**b**) vote of the board of commissioners, may constitute an offense under Tenn. Code Ann. § 39-16-402(a)(4), (5).

ANALYSIS

The compensation of commissioners is governed by Tenn. Code Ann. § 6-20-204, which provides that the salary of commissioners cannot exceed a certain amount, depending on population. Subsection (c)(1) of the statute, which becomes effective only upon approval of two-thirds (**b**) of the board of commissioners, provides:

> Notwithstanding the limits established in the preceding subsections, the salaries of the mayor and commissioners may be established annually by the board of commissioners at the time of adoption of the annual operating budget; provided, however, that such salaries shall not be increased or diminished prior to the end of the term for which such officials were elected.

Nothing in this section or chapter provides for criminal penalties. Tenn. Code Ann. § 39-16-402, however, does address public servants who, with intent to obtain a benefit or to harm another, intentionally

or knowingly violate a law relating to the public servant's office or employment, or receives a benefit not otherwise authorized by law. Tenn. Code Ann.§ 39-16-402(a)(4), (5). A "public servant" refers to anyone elected, selected, appointed, employed, or otherwise designated
as one of the following even if the public servant has not yet qualified for office or assumed the duties:

(A) An officer, employee, or agent of government;

(B) A juror or grand juror;

(C) An arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

(D) An attorney at law or notary public when participating in performing a governmental function;

(E) A candidate for nomination or election to public office; or

(F) A person who is performing a governmental function under claim of right although not legally qualified to do so.

Tenn. Code Ann. § 39-16-401(3).

Since the violation at issue here would involve increasing salaries prior to the end of the term for which the officials were elected, provided that the board of commissioners approved subsection (c)(1) by a two-thirds (**b**) vote, a commissioner would not commit official misconduct for each monthly payment he receives. It is a defense to the offense, however, if the benefit involved was a trivial benefit incidental to personal, professional or business contact, and involved no substantial risk of undermining official impartiality. Tenn. Code Ann. § 39-16-402(c).

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