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November 7, 2003

Opinion No. 03-140

Salary Increases for Local Legislative Bodies and Boards

QUESTIONS

1. Under Article II, Section 23 of the Tennessee Constitution, "[t]he compensation and expenses of the members of the General Assembly may from time to time be reduced or increased by laws enacted by the General Assembly; however, no increase or decrease in the amount thereof shall take effect until the next general election for Representatives to the General Assembly." Does this restriction, by inference or otherwise, apply to other elected bodies such as county commissions, city councils, or school boards?

2. If the answer to Question 1 is yes, are there exceptions such as local charters that may contravene such requirements?

3. If a body that is prohibited from raising its salary during its current assembly passes a law to do so, would that law, if written as effective upon passage, take effect at the next assembly?

OPINIONS

1. No, by its terms the limitation applies to members of the General Assembly. Provisions in the Tennessee Constitution that address county and other local officials contain no such restriction.

2. Because of the answer to Question 1, Question 2 is moot.

3. A definitive answer to this question would depend on the particular statute or constitutional provision that contained the prohibition. Unless a statute or constitutional provision provides otherwise, and depending on the terms of the particular enactment, a court would probably elide the illegal effective date and allow the increase to go into effect when it may legally do so.

ANALYSIS

1. & 2. Constitutional Restriction on Salary Increases for Local Elected Governing Bodies and Boards

The first question concerns the scope of a restriction in Article II, Section 23 of the Tennessee Constitution. Under that provision, members of the General Assembly may raise or lower their compensation or expenses by law, but the law may take effect only after the next general election for legislative representatives. The provision states that "[t]he compensation and expenses of the members of the General Assembly may from time to time be reduced or increased by laws enacted by the General Assembly; however, no increase or decrease in the amount thereof shall take effect until the next general election for Representatives to the General Assembly." The question is whether this restriction, by inference or otherwise, applies to the salaries of the members of local elected bodies such as county commissions, city councils, or school boards.

Absent a constitutional or statutory prohibition, the compensation of public officers and employees may be raised or lowered during the time of their term of service. *Blackwell v. Quarterly County Court of Shelby County*, 622 S.W.2d 535 (Tenn. 1981); *Haynes v. State*, 22 Tenn. 480 (1842). By its terms, Article II, Section 23 applies to members of the General Assembly, not to elected members of local governing bodies and boards. Provisions of the Tennessee Constitution that directly address county officers contain no such restriction. *See, e.g.*, Tenn. Const. Art. VII, § 1; Art. XI, § 9; Art. XI, § 17. Nor does the Tennessee Constitution place such restriction on the members of other local governing bodies and boards. Salaries for all these officials, therefore, are governed solely by statute. Op. Tenn. Atty. Gen. 88-54 (March 11, 1988).

Because of the answer to Question 1, Question 2 is moot.

3. Effective Date of Salary Change

The last question concerns an act under which a body increases its own salary although the constitution or a statute provides that such a salary increase may only become effective after the next election of members. The question is whether the entire act is void, or whether the effective date could be elided and the salary could apply after the next election. A definitive answer to this question would depend on the particular statute or constitutional provision that contained the restriction. The Tennessee Supreme Court has concluded, however, that the effective date of an act unconstitutionally increasing the salary of Knox County general sessions judges during the term for which they were elected could be elided, and the increase could go into effect during the next judicial term. *Bayless v. Knox County*, 199 Tenn. 268, 286 S.W.2d 579 (Tenn. 1955); *Crawford v. Gilpatrick*, 646 S.W.2d 433 (Tenn. 1983). Unless a statute or constitutional provision provides otherwise, and depending on the terms of the particular enactment, the court would probably apply the same principle to a statute, resolution, or ordinance increasing a salary. A court would, therefore, probably elide the illegal effective date and allow the increase to go into effect when it may legally do so.

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