



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD  
62706

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FILE NO. S-1017

CONSTITUTION:

Applicability of Section 21 of  
Article V to Increase in Per Diem  
Compensation of State Police  
Merit Board

Martin L. Silverman, Chairman  
State Police Merit Board  
Suite 1016  
Ridgley Building  
Springfield, Illinois 62701

Dear Mr. Silverman:

By your letter you requested my opinion concerning the effective date of an increase in compensation of members of the State Police Merit Board provided in "AN ACT to amend section 5 of 'AN ACT in relation to the State Police'" (P.A. 79-937), which became effective on October 1, 1975. It appears from your letter that the three members of the Board are now serving terms which commenced prior to the effective date of the legislation and which will end in the month of March in

Martin L. Silverman - 2.

the years 1977, 1979 and 1981, respectively. Your question is whether the \$125.00 per diem, an increase over the prior statutory per diem, may now be paid to the Board members without violation of the Illinois Constitution.

The Constitution of 1970, as did the preceding Constitution of 1870, contains a number of limitations on the changing of salaries of various State officials during the terms of their offices. These limitations have often been applied in the past to prohibit increases or decreases in per diem compensation. The opinions of several of my predecessors have determined increases or decreases in per diem compensation to be prohibited by section 11 of article IX of the Constitution of 1870, which forbade increases or decreases in the fees, salary or compensation of municipal officers during their terms. (1912 Ill. Att'y. Gen. Op. 564; 1931 Ill. Att'y. Gen. Op. 467; 1943 Ill. Att'y. Gen. Op. 91; 1966 Ill. Att'y. Gen. Op. 33.) I have also determined in previous opinions that section 9(b) of article VII of the Constitution of 1970, which forbids changes in salaries of elected officers of units of local government during their terms,

Martin L. Silverman - 3.

prohibits increases in per diem compensation. (1972 Ill. Att'y. Gen. Op. 279; 1972 Ill. Att'y. Gen. Op. 290.) Similarly, other provisions of the Constitution of 1970 which prohibit changes in salaries of officers during their terms would also apply to changes in per diem compensation. Since the per diem compensation to the members of the State Police Merit Board is clearly salary within the meaning of these constitutional limitations, in answering your inquiry it becomes necessary to ascertain whether any of those provisions are applicable to a board or agency possessing powers, authorities and responsibilities and performing the services and functions such as those statutorily prescribed for the State Police Merit Board.

The constitutional prohibitions referred to are those pertaining to the three branches of government found in the Legislative, Executive and Judicial Articles of the Constitution as follows. Section 11 of article IV (Legislative Article) provides:

"A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected."

Martin L. Silverman - 4.

Section 14 of article VI (Judicial Article) provides:

"Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office. All salaries and such expenses as may be provided by law shall be paid by the State, except that Appellate, Circuit and Associate Judges shall receive such additional compensation from counties within their district or circuit as may be provided by law. There shall be no fee officers in the judicial system."

Obviously, the constraints of these two constitutional articles do not apply to the State Police Merit Board members, who are neither "members of the Legislature" nor "judges" within the meaning of the respective provisions quoted above. While as noted below the State Police Merit Board has certain functions of a quasi-judicial nature, the Judicial Article provision relates only to the judges of the three constitutionally defined courts, namely, the circuit court, the appellate court and the Supreme Court. Similarly, while delegated rule-making functions are somewhat legislative in nature, it is clear the Board is not a part of the legislative branch.

The third and pertinent constitutional provision relates to executive officers of State government. Section 21 of article

Martin L. Silverman - 5.

V (Executive Article) reads as follows:

"Officers of the Executive Branch shall be paid salaries established by law and shall receive no other compensation for their services. Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms."

Thus, remaining to be considered is whether section 21 of article V, prohibiting changes in the salaries of "officers of the Executive Branch", is applicable to the members of the State Police Merit Board thereby precluding immediately operative salary increases under Public Act 79-937. The general principles used in construing statutes are also applicable to construing Constitutions. (People v. Hutchinson, 172 Ill. 486.) The intent of a statute must be determined from the whole document, and all its material parts should be construed together. (Inter-State Water Co. v. City of Danville, 379 Ill. 41.) Thus, a Constitution should be construed as a whole, and in order to ascertain who are "officers of the Executive Branch" the meaning of similar words of other sections of article V must be consulted.

While article V of the Constitution contains no

Martin L. Silverman - 6.

definition of "officers of the Executive Branch" it is clear from references in several of its sections that such "officers" include both elective and appointive officials who have stated terms of office. Illustrative of this generality are section 9 - Governor-Appointing Power, section 10 - Governor-Removals, section 19 - Records-Reports, and section 20 - Bond. Unexpressed but implied in the article is the requirement that such "officers" are those who render principally "executive" as distinguished from "legislative" or "judicial" services. Clearly members of the State Police Merit Board are officials of State government who are appointed for stated terms of office by the Governor by and with the advice and consent of the Senate, pursuant to section 9 of article V. Are they "officers" whose duties are principally "executive" rather than "legislative" or "judicial"? The answer is to be found in an analysis of the functions of the Board and of the constitutional meaning of "officer of the Executive Branch" as revealed in the proceedings of the Constitutional Convention. Based on such an analysis, it is my opinion that members of the State Police Merit Board are to be classified as

Martin L. Silverman - 7.

"officers of the Executive Branch" within the meaning of section 21 of article V.

The powers of State government are divided into three co-equal branches, the functions of which may be stated as follows: the legislative branch creates, enacts and repeals laws; the executive branch executes, administers and enforces laws; and the judicial branch construes, interprets and applies laws in the adjudication of particular cases.

(Witter v. Cook County Commissioner, 256 Ill. 616; People ex rel. Woll v. Graber, 394 Ill. 362.) While these distinctions are usually clear, a particular agency or governmental body created by the General Assembly may have functions partaking of the nature of all three branches of government. Thus in Devine v. Brunswick-Balke-Collender Co., 270 Ill. 504, the Supreme Court of Illinois said at pages 509-10:

"Generally speaking, there is no great difficulty in distinguishing between the different departments and the duties and functions of each, but in the practical application of those various functions to the affairs of State it is often difficult to determine to which of these three departments the duties and functions of many officers properly belong. This arises from the fact that in the practical

Martin L. Silverman - 8.

administration of State affairs there is often such a blending and admixture of the different powers of government that instances will occur in which officers are charged with functions and duties which partake of the nature of all three of these departments."

Examination of the statutorily prescribed powers, duties and functions of the State Police Merit Board discloses that they lie in the following basic areas: (1) formulating disciplinary measures for infractions of the rules of the Department of Law Enforcement; (2) the review of discipline meted out by the superintendent of police, upon the request of a disciplined officer; (3) certification of the qualifications of applicants for State Police appointments and the certification of candidates for promotions; and (4) the establishment of standards and rules for the administration of the merit system in the hiring, firing, promotion and merit qualifications of State Police personnel. In the performance of these duties the Board holds hearings and may take evidence and subpoena witnesses to determine its action with respect to the removal, demotion or suspension of a State Police officer. Ill. Rev. Stat. 1973, ch. 121, pars. 307.3 et seq.



Martin L. Silverman - 9.

While these functions are mixed, some being suggestive of a delegated quasi-legislative nature and others being quasi-judicial in character, it is my opinion that the members of the State Police Merit Board principally render an administrative function and must be classified as executive officers of the State. They are appointed by the Governor with the advice and consent of the Senate, and they perform administrative duties for the executive by supervising the merit system. The functions of the Board are closely related to the Department of Law Enforcement, one of the numerous executive departments created by the legislature in the Civil Administrative Code. (Ill. Rev. Stat. 1973, ch. 127, pars. 1 et seq.) They closely relate to the superintendent of State Police, an office specifically established by statute as an executive position in that Department.

Administrative agencies such as the State Police Merit Board and similar departments of Illinois State government have long been classified as "executive" for purposes of determining whether salary changes may be operative during the term of an official's office. A landmark case dealing with such

Martin L. Silverman - 10.

administrative departments is Peabody v. Russell, 301 Ill. 439, which dealt with the question whether the directors of 19 administrative or "code" departments provided for under the Civil Administrative Code were "officers" governed by the provisions of section 23 of article V (Executive Article) of the 1870 Constitution, which prohibited the increase or decrease of salaries of officers during stated terms of office. The Supreme Court broadly interpreted section 23 to include the 19 department heads as "officers" and after finding that "the officers mentioned in article V are 'the officers of the Executive Department and of all public institutions of the state'", said at pages 443-44:

"It is evident from the sections of the constitution referred to, that practically every officer, whether constitutional or statutory, aside from those known as incumbents in this case, is specifically brought within the provisions prohibiting such change in salary. In arriving at the construction contended for by appellees it must be apparent either that the framers of the constitution omitted the offices filled by the incumbents herein with a definite intent and purpose to omit them, or that they were omitted by oversight. Neither situation can be presumed, but the fact that practically every other officer specified or authorized under the constitution comes within this prohibition, argues of itself, in the absence of something

Martin L. Silverman - 11.

in the context to the contrary, that it was the intention and purpose of the framers of the constitution to provide that the salary of no public officer holding place for a definite period under the constitution or statutory enactment of the State should be increased or diminished during his term of office."

A similar judicial classification of "administrative" personnel as being within the executive branch of local government has occurred in a number of cases involving municipalities including Illinois Bell Tel. Co. v. Fox, 402 Ill. 617.

My conclusion that members of the Board are "officers of the Executive Branch" is confirmed by the record of the Sixth Illinois Constitutional Convention and the circumstances surrounding the drafting of section 21 of article V of the 1970 Constitution. The expanded interpretation of section 23 of article V of the 1870 Constitution made by the Supreme Court in Peabody was expressly adopted by the drafters of the 1970 Illinois Constitution. The report of the Committee on the Executive of the 1970 Constitutional Convention, Sixth Illinois Constitutional Convention, Volume VI, Page 377, in its

Martin L. Silverman - 12.

explanation to a proposed revision of section 23 of article V of the 1870 Constitution states:

"One who compares this proposed revised section with its existing version might suppose that its application is being extended from officers specifically named in the Executive Article to include even statutory officers. In fact, however, the revision merely writes into the Constitution the fact that past Court decisions (see Peabody v. Russell, 301 Ill. 439 (1922)) have given the language such a broad interpretation. The wide application is desirable in order that compensation by salary and not by fees be the rule throughout the Executive Branch."

In addition, in the Convention debates, Delegate Gierach in explaining section 21 of article V states:

"As you may recognize, this provision is quite comparable to the present Section 23. It may appear at first blush that there has been some increase in the coverage of this section, but there is a case in Illinois which extends the application of this compensation provision to all appointive officers which have a fixed term. So the Committee section, in effect, adopts that case and more fully expresses it in the language of our present section." (III Record of Proceedings 1309.)

For the foregoing reasons payment of the increased per diem of \$125.00 if commenced at this time would constitute

Martin L. Silverman - 13.

a clear violation of the prohibition of section 21 of article V of the 1970 Constitution. While Public Act 79-937 became effective as a law on October 1, 1975, the compensation increases therein provided will not become operative for members of the State Police Merit Board until the expiration of their respective and existing terms of office.

Very truly yours,

A T T O R N E Y   G E N E R A L