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SPRINGFIELD

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FILE NO. S-1366

**COMPENSATION:
Constitutionality of Automatic
Cost-of-Living Salary Increase
for State Officers**

**Honorable David C. Shapiro
Senate Minority Leader
309 Capitol Building
Springfield, Illinois 62706**

Dear Mr. Shapiro:

You have asked about the constitutionality of providing for an automatic yearly or biennial increase in the salaries of legislators and officers of the executive branch, in an amount to be determined by an objective index of the rate of inflation. For constitutional reasons, such a plan could not take effect until the term of office after the term in which it became law. With that limitation, it is my opinion that such a pay plan would be constitutional.

The applicable constitutional restrictions are in the Illinois Constitution of 1970, article IV, section 11:

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"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."

and article V, section 21:

"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."

The salaries of local government officials are also prohibited from being changed during their terms by the 1970 Constitution, article VII, section 9(b), in terms similar to the 1870 Constitution, article IX, section 11, which provided:

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

Despite that apparently unambiguous prohibition on any change in a salary during the incumbent's term, the Illinois Supreme Court in Brissenden v. Howlett (1964), 30 Ill. 2d 247, held that the last-mentioned prohibition did not prevent county school superintendents' salaries from changing during their terms, pursuant to statute, due to a change in county population. The Court pointed out that a majority of jurisdictions considering the

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question have interpreted similar constitutional provisions the same way, and quoted People ex rel. Holdom v. Sweitzer (1917), 280 Ill. 436, 442, to explain the purpose of the prohibitions on changes in salary:

" * * * 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 be 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. * * *

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(39 Ill. 2d at 250.)

The Court in Brissenden went on to state:

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It would follow that the spirit and purpose of the constitutional prohibition would not be violated by an act establishing a fixed scale of pay to be determined during the term of office according to such an extraneous fact as the Federal census. * * *

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* * * The constitutional prohibition is directed not against a change in income but against a change in the law determining such income during the term of office. * * *

* * *

(Emphasis added.) (30 Ill. 2d at 250, 251.)

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In opinion No. S-1006 (1975 Ill. Att'y. Gen. Op. 318) I advised, based on Brissenden and other authorities, that a county board could not in its discretion give a cost-of-living salary increase to one or more county officers, since such a discretionary increase contained the very vice at which the constitutional prohibition is aimed — the possibility of an official's being able to influence his salary during his present term. However, I stated that providing beforehand for an auto-matic salary increase based on an objective inflation index such as one of those calculated by the Federal government presumably would be constitutional. Such a plan would give officers no power whatever to influence the amount of their salaries during the terms for which they were elected or appointed; their salaries would be determined by an index calculated by an outside, objective agency.

As noted above, Brissenden v. Howlett held that a salary change based on "such an extraneous fact as the Federal census" is constitutional, and pointed out that "[T]he constitutional prohibition is directed not against a change in income but against a change in the law determining such income during the term of office." The highest court of at least one state has held that

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cost-of-living increases may be applied to constitutional dollar limitations in salaries. See Matthews v. Allen (Ky. 1962), 360 S.W. 2d 135, and Commonwealth v. Hesch (Ky. 1965), 395 S.W. 2d 362, followed recently in Lester v. City of Ft. Thomas (Ky. 1975), 531 S.W. 2d 491. Based on these authorities and the reasoning set forth above, it is my opinion that a plan such as the one described would not violate the constitutional prohibition on changes in salary during an officer's term.

Very truly yours,

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