



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 9, 1999

Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-009

COMPENSATION:
Increase in Officer's Salary to
Reflect Changes in Duties

The Honorable Gary W. Pack
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether a county board may increase the salary of the county auditor during the term for which she was elected to reflect changes in the duties of that office. For the reasons hereinafter stated, it is my opinion that article VII, section 9(b) of the Illinois Constitution prohibits the county board from increasing the salary of the county auditor during the term for which she was elected, notwithstanding that subsequent to her election, certain duties have been reassigned to that office pursuant to court order.

According to your letter and the supporting documents submitted therewith, on February 20, 1996, the county board of

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McHenry County adopted an ordinance reorganizing the financial management of the county, creating a county finance department, and transferring to that department, together with other responsibilities, general accounting functions formerly performed by the county auditor. On the same date, the board adopted a resolution stating its intent to reduce the salary of the county auditor for the term beginning in December, 1996, to reflect the restructuring of the office.

On May 21, 1996, the county board adopted a resolution fixing the salaries of county officials to be elected at the general election in November, 1996. The auditor's salary was set at the level specified in the February 20, 1996, resolution, in an amount \$17,000 less than that of other county officers, and approximately \$2,000 below the minimum salary for the office required by subsection 4-6001(c)(4) of the Counties Code (55 ILCS 5/4-6001(c)(4) (West 1996)). On August 19, 1997, however, the county board adopted a resolution increasing the auditor's salary to the statutory minimum for the years 1997 and 1998. (See 1975 Ill. Att'y Gen. Op. 10, 11, wherein it was concluded that raising a county officer's salary to the statutory minimum in effect when he or she assumed office is not violative of article VII, section 9(b) of the Constitution.) The May 21, 1996, resolution had provided for annual increases, so that the compensation fixed for

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1999 and 2000 exceeded the statutory minimum, and those amounts were not changed. (See opinion No. 95-010, issued July 15, 1995; opinion No. 94-016, issued June 9, 1994.)

In 1998, on the motion of the county auditor, a special prosecutor was appointed to represent her in a declaratory judgment action against the county board challenging the validity of the transfer of statutory duties from the auditor to the county finance department. (55 ILCS 5/3-1006 (West 1996).) The matter was resolved in an agreed order pursuant to which certain duties were transferred back to the office of the auditor with commensurate staff and budget transfers. (In the Matter of Rooney 97 MR 260 (McHenry Co., April 6, 1998); Amended Ordinance 0-9804-12-25, April 3, 1998) The auditor has inquired whether the county board can increase her salary for the remainder of her term, which will end in November, 2000, to reflect the restoration of responsibilities and staff to her office.

Article VII, section 9(b) of the 1970 Illinois Constitution provides:

" * * *

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

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For over one hundred years the Illinois Supreme Court has held, based upon this provision and its antecedent in the 1870 Constitution, that the imposition of additional duties upon an officer during his or her term does not justify an increase of salary during that term. For example, when the General Assembly in 1872 required treasurers in counties under township organization and sheriffs in counties not so organized to serve as ex officio county collectors, those officers were not permitted additional compensation for the additional duties. (Kilgore v. People (1875), 76 Ill. 548; Broadwell v. People (1875), 76 Ill. 554.) Similarly, the court held that county treasurers who performed the duties of supervisor of assessments ex officio could not receive additional compensation therefor. (Parker v. County of Richland (1905), 214 Ill. 165; Foote v. Lake County (1903), 206 Ill. 185.) It has also been held that county board members who served as commissioners of forest preserve districts ex officio were not entitled to receive additional compensation from the district. (Peabody v. Forest Preserve District (1926), 320 Ill. 454, 463.) More recently, the court prohibited members of the General Assembly from receiving additional compensation for serving as institutional officers pursuant to a similar provision in article IV, section 11 of the Constitution. (Rock v.

Burris (1990), 139 Ill. 2d 494.) Additional cases could be cited, but all are consistent in this respect.

The present circumstances in McHenry County differ from the cited cases only because the county board, in its 1996 ordinance reorganizing the office of the county auditor and the subsequent resolutions setting the salary for that office, evidently misunderstood its authority under the law to effectuate those changes. The auditor's actions to redress the purported reorganization have resulted in the restoration of the duties of the office, and the adjustment of her salary to meet the statutory minimum. Based upon the cases cited above, however, it is my opinion that the county board is prohibited by article VII, section 9(b) of the Constitution from further increasing the salary of the auditor during her current term of office. The auditor's salary is now fixed in accordance with law; although it is possible that the county board would have fixed the salary in a greater amount had it known that the auditor would reassume the duties erroneously transferred to the county finance department, such conjecture does not justify avoidance of the constitutional

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prohibition against mid-term increases in the compensation of
elected local officials.

Sincerely,

A handwritten signature in cursive script, reading "James E. Ryan". The signature is written in black ink and is positioned above the printed name.

JAMES E. RYAN
ATTORNEY GENERAL