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FILE NO. S-665

CONSTITUTION:
Salary of Township Road Commissioner

Honorable Clarence E. Neff
State Representative
47th District of Illinois
Box 368
Stronghurst, Illinois 61480

Dear Mr. Neff:

I have your letter wherein you state:

As Chairman of the County Problems Commission, I would appreciate an official opinion from your office on the following problem.

The question arises as to whether it is constitutional to increase the term of a township road commissioner, and if so, whether it is possible to give him a raise in salary. In the 1972 Session of the General Assembly, an amendment was made to Illinois Revised Statutes (1971), Chapter 121, Section 116, to extend the term of those road commissioners elected in 1971 from 4 to 6 years. Those elected in 1977 will again be elected for 4-year terms.

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Section 6-207 of the same Road and Bridges Act, cited above, provides that on or before the last Tuesday in March prior to the date of the election for road commissioners, the township board is to set the compensation of the road commissioner.

The Constitution of 1870 provided in Article IV, Section 28, that the terms of elected officials could not be increased during their term in office, however, the Constitution of 1970 does not have this provision. On the second aspect of the question, the 1970 Constitution provides in Article VII (Local Government Article) Section 9 (b) that '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.'

Specifically, the Commission seeks an opinion the following questions:

1. In view of Article VII, Section 4c of the 1970 Constitution, was PA77-2171 amending the Illinois Highway Code (Chapter 121 S6-116) by legislatively extending the term of office of the Highway Commissioners unconstitutional?

2. In view of Article VII, Section 9b of the 1970 Constitution and PA77-2171 mentioned above, would an increase in the highway commissioner's salary before the beginning of

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the two year extension be unconstitutional? --
In particular, would the fact that the commissioners were elected to only a four year term make such an increase permissible in view of the constitutional wording: ' . . . shall not take effect during the term for which that officer is elected.' "

I assume from your letter that you are primarily concerned with the highway commissioner of a road district comprised of a single township. You have inquired into the constitutionality of the extension of this officer's term, in reference to section 4(c) of article VII of the Illinois Constitution of 1970.

The term of office of township highway commissioners was extended pursuant to an amendment to section 6-116 of the Illinois Highway Code. Ill. Rev. Stat. 1972 Supp., ch. 121, par. 6-116.

" * * * Except as otherwise provided in this Section with respect to highway commissioners of township and consolidated township road districts, on the first Tuesday in April in 1959 and every 4 years thereafter in all counties, other than counties in which a county unit road district has been established and other than Cook County, the highway commissioner of each road district and the

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district clerk of each road district having an elected clerk, shall be elected to hold office for a term of 4 years, and until his successor is elected and qualified; in each township and consolidated township road district outside Cook County, the highway commissioner elected in 1971 shall serve for a term of 6 years and until his successor is elected and qualified, and a highway commissioner shall be elected on the first Tuesday in April, 1977, and every 4 years thereafter to hold office for a term of 4 years and until his successor is elected and qualified. The highway commissioner of each road district in Cook County shall be elected on the first Tuesday in April, 1957 and every 4 years thereafter for a term of 4 years, and until his successor is elected and qualified. * * * " (Emphasis added.)

Section 4(c) of article VII of the Illinois Constitution of 1970 provides:

"Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by

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county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance." (Emphasis added.)

While section 4(c) is significant in establishing four year terms, subject to change as therein provided, it should be noted that section 4(c) addresses itself to "county officers". Section 6-112 of the Illinois Highway Code (Ill. Rev. Stat. 1971, ch. 121, par. 6-112) reads in pertinent part:

"* * * The highway commissioner of each road district comprised of a single township is an officer of that township."

Therefore, the language of section 4(c) is not applicable to township highway commissioners.

What is determinative, in my opinion, is the fact that the Illinois Constitution of 1970 contains no blanket restraint upon extension of terms which can be deemed applicable to the officers here under consideration. It

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has long been held that the Illinois Constitution is not a grant of power to the General Assembly -- it is to be regarded as a restriction on its powers. (Herb v. Pitcairn, 392 Ill. 138; People v. CTA, 392 Ill. 77.) The Illinois Supreme Court in Gillespie v. Barrett, 366 Ill. 612 at page 615, stated as follows:

"It has been the uniform holding of this court, both under the present Constitution and the prior ones, that the legislature possesses every power not delegated to some other department or to the Federal Government, or not denied to it by the Constitution of the State of the United States. * * *".
(Emphasis added.)

Furthermore, in absence of constitutional prohibition, the legislature which creates an office, has plenary power with respect to that office so that it may abolish the office, change it or shorten or lengthen the term of the office. 63 Am. Jur. 2d., Public Officers and Employees, sec. 147.

Since the Illinois Constitution does not forbid

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legislative alteration of terms of office except in very limited circumstances not applicable here, I am of the opinion that the General Assembly has the residual authority to legislate on this matter.

Having determined that the legislature has the power to increase the terms of office of township highway commissioners, it remains to be considered whether the compensation of such officers can lawfully be changed during any portion of their extended six-year terms. Pursuant to section 6-207 of the Illinois Highway Code (Ill. Rev. Stat. 1972 Supp., ch. 121, par. 6-207), the function of making salary adjustments of township highway commissioners is vested exclusively in the boards of town auditors.

However, since that function is statutory and is at least potentially subject to change or preemption by further legislative enactment, this opinion will deal broadly with the question of salary changes during terms of office.

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whether by board or by General Assembly action.

Section 9(b) of article VII of the Illinois Constitution of 1970 reads:

"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."

Under any reasonable construction of this section, changes in the salaries of commissioners elected in 1971, made effective during the initial four years of their terms, would be patently unconstitutional. The critical question is whether the two years added pursuant to the amendment of section 6-116 can be regarded as falling outside the sweep of the phrase "term for which that officer is elected," thus immunizing from constitutional restraint an increase or decrease made effective during the two-year "add-on" period.

It is a fundamental canon of constitutional construction that the true meaning of words used can best be ascertained

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by considering the purposes of the constitutional provision in which they appear. (See People ex rel. Nelson v. Jackson-Highland Building Corp., 400 Ill. 533 (1948)). The rule is well stated by the Illinois Supreme Court in the case of People v. Crawley, 274 Ill. 139 (1916), wherein the court said at page 143:

"In construing constitutions, as with statutes, the chief purpose is to give effect to the intent of the makers * * *. In seeking such intention we are to consider the language used, * * * the evil to be remedied and the object to be attained. We are not confined to the literal meaning of the words."
(Emphasis added.)

Specifically, a constitutional provision that the salary or compensation of any public officer shall not be increased or diminished during his term of office is comprehensive and should be interpreted broadly to promote its policy. Pressman v. D'Alasandro, (Maryland, 1956), 125 A. 2d 35.

The Illinois Supreme Court has had occasion to consider the purpose of provisions similar to the present section 9(b)

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which were contained in the Constitution of 1870. (See Peabody v. Russel, 301 Ill. 439; People ex rel. McDavid v. Barrett, 370 Ill. 478.) In People ex rel. McDavid v. Barrett, the court stated at page 480:

"Section 16 of Article VI prohibits the increase of a circuit judge's salary during his incumbency, or his receiving any other compensation, perquisite or benefit in any form. Section 19 of Article IV prohibits the granting of any extra compensation to any public officer, agent, servant or contractor, after service has been rendered or contract made. The purpose of these constitutional provisions is obvious. Temptation of a public official, through pressure or persuasion or because of gratitude, to favor parties or individuals procuring or promoting a legislative increase of his salary, is removed from the incumbent's path." (Emphasis added.)

In "The Illinois Constitution: an Annotated and Comparative Analysis", (1969) Institute of Government and Public Affairs, University of Illinois, Messrs. Braden and Cohn, respected commentators on Illinois Constitutional law, observe as follows at page 476-7:

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"There are two simple principles involved in this increase or decrease in salary business, but in the welter of litigation the principles sometimes seem to be forgotten. One principle is that the man who determines the amount of a salary should not be allowed to use that power to influence someone who is not responsible to him * * * .

Where compensation is set by a legislative body for executive and administrative officials, the principle is applicable to any officials who are elected by the voters, for under the theory of separation of powers, the fact of election means that they are supposed to be independent of the legislature * * *

* * *

The second principle is that a man ought not to be able to increase his own salary. Thus it is appropriate to prohibit those people who make appropriations - legislators, supervisors, commissioners, councilmen, aldermen - from increasing their own salaries during the term for which they are elected." (Emphasis added.)

If the words "during the term for which that officer is elected" were to be construed as applying only to the four-year term originally in force when the highway commissioners

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were elected in 1971, the effect would be to nullify the operation of section 9(b) with respect to the salaries of incumbent commissioners during the final two years of their current terms. Such a narrow and technical construction would do violence to an objective strongly expressed in section 9(b) and in the three other companion provisions of the 1970 Constitution, namely, to erect a barrier between officers, during their tenure as public officials, and those who are empowered to establish the compensation of such officers. Were such barrier to be removed, some officeholders might, by virtue of their incumbency, exert considerable pressure to obtain favorable salary adjustments. By the same token, the mere possibility that the salary of an officer might be decreased during his term could severely impair his independence and freedom of action as a public servant.

Finally, it has been held that a prohibition against a change of compensation of officers applies to officers

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whose terms have been lengthened by constitutional amendments and legislation under them and prohibits any increase in their compensation during their extended terms. 67 C.J.S. Officers, sec. 95.

Since under the Local Government Article of the new Constitution, the legislature and other governmental bodies now possess extensive powers to alter terms of office, the potential for future evasion of section 9(b) by a two-step process of increasing terms and subsequently altering salaries can scarcely be ignored. Obviously, it was not the intent of the framers of the Constitution and the people in adopting it that the legislature or local government boards may lawfully do in two steps that which is expressly prohibited if done in a single step. It seems clear that the courts of this State would be loath to adopt a construction of section 9(b) which would permit this mischievous result to occur.

Therefore, it is my opinion, that the words "term for

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which * * * elected mean the entire period during which the right of elective office is possessed. Thus, for purposes of section 9(b), any valid extension of a term of elective office is as much a part of the elective term, as is the term which was formerly prescribed.

In reaching this conclusion, I am cognizant of the decision of the Supreme Court of Indiana in Swank v. Tyndall, 78 N.E. 2d, 535 (1948), wherein the court upheld the legislature's increase of an officer's salary whose term had been extended as a result of a "skip-election" law. While the court held that the period of extension was not a part of "the term for which such officer was elected or appointed," it is significant that the prohibition against salary increases involved therein was statutory rather than a constitutional one. In this regard, it is important to bear in mind the teaching of our Supreme Court in People v. Crawley, supra, wherein it was stated at page 142:

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" * * * [L]ess technical rules of construction are applied in construing constitutions than in construing statutes. 'Narrow, technical reasoning is misplaced when it is brought to bear upon an instrument framed by the people themselves for themselves, and designed as a chart, upon which every man, learned and unlearned, may be able to trace the leading principles of government.'" [Citations omitted.]

The court in Swank v. Tyndall seemingly recognized this distinction by devoting a substantial portion of its opinion to the issue of whether or not an earlier attempt by constitutional referendum to include the salary increase prohibition in Indiana's Constitution had failed of adoption. (The court ruled that it had failed.) Such emphasis on the constitutional issue strongly implies that the Swank case might have been decided differently if Indiana's restraint against salary increases had in fact been one of constitutional stature.

Furthermore, it is interesting to note that an earlier Indiana decision tends to support the kind of interpretation which I have relied upon herein. In the case of Harrison v.

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Menaugh, 151 Ind. 260, 51 N.E. 117, 122, the court said:

"In consideration of this constitutional provision, the electors of this state, when, by their ballots, they designate a person to fill a public office the tenure of which is prescribed either by the constitution or some statute, must be presumed to understand and know that the contingent holding of the officer until his successor is elected and qualified is as much a part of the term for which he is elected as is that which is expressly prescribed and fixed." (Emphasis added.)

Finally, it should be mentioned that insofar as the boards of auditors are concerned, section 6-207 of the Illinois Highway Code contains an additional obstacle to changes in the salaries of township highway commissioners during any part of their extended terms. That section provides, in relevant part, as follows:

" * * * [T]he boards shall fix the compensation of the commissioner, whether an annual salary or a per diem, on or before the last Tuesday in March prior to the date of election of the commissioner * * * ".
(Emphasis added.)

In essence, this section makes the adjustment of

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salaries a function to be undertaken in anticipation of an election. By necessary implication, such adjustment is to be prospective in operation and linked to the change of term which the election entails. Since the amendment of section 6-116 which created the extension specifically fixed the next election date for highway commissioners elected in 1971 as the first Tuesday in April, 1977, any board attempt to implement salary adjustments prior to such election date would, in my opinion, violate the intentment of the statute in its present form.

For the reasons stated above, it is my opinion that:

- (1) General Assembly's amendment to section 6-116 of the Illinois Highway Code, which resulted in an extension of the current term of township highway commissioners from four to six years is constitutionally valid and binding;
- (2) any legislative action which would have the effect of altering the compensation received by such commissioners during any portion of their extended term would be violative

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of section 9(b) and therefore void; and (3) any attempt by a board of auditors to make such a salary adjustment would be repugnant both to the Constitution and to the present provisions of section 6-207 whereby such adjustments are to apply only to the next election of the commissioners.

Very truly yours,

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