



WILLIAM J. SCOTT

ATTORNEY GENERAL

STATE OF ILLINOIS

500 SOUTH SECOND STREET

SPRINGFIELD

62706

January 20, 1975

FILE NO. S-861

FEEES AND SALARIES:

**Changes in Salaries of
Elected County Officials**

**Honorable Frank X. Yackley
State's Attorney, LaSalle County
Ottawa, Illinois 61350**

Dear Mr. Yackley:

I have your letter wherein you state in part:

"It is noted that Senate Bill 1240 was just enacted into law with the Governor's signature. In the County of LaSalle we had four officials who were elected to office * * * those being affected are County Clerk, County Treasurer and County Sheriff. * * *

At the present time the county budget for the ensuing year has been adopted and the salaries for the above mentioned elected officials is set at \$15,000 per year. At this stage, this having come to my attention today, it is too late to amend the budget as the board would so

Honorable Frank X. Yackley - 2.

desire. So the question arises, do the effective salaries for those elected officials remain at \$15,000 or automatically increase to \$16,500 per annum?

* * *

Section 1 of "AN ACT in relation to the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors with their necessary clerk hire, stationery, fuel and other expenses, in counties of less than 1,000,000 inhabitants" (Ill. Rev. Stat. 1973, ch. 53, par. 37a) was amended by Senate Bill 1240. Section 1 now reads in part:

"The County Board in all counties of less than 1,000,000 inhabitants, shall fix the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors, * * * and such compensation * * * shall be fixed within the following limits:

* * *

To each such officer in counties containing 100,000 or more inhabitants but less than 200,000 inhabitants, not less than \$16,500 per annum and not more than \$23,000 per annum.

* * *

Prior to amendment by Senate Bill 1240 (P.A. 78-1251), section 1 provided a minimum salary payable to the above-named

Honorable Frank X. Yackley - 3.

officers of \$12,500 per annum and a maximum salary of \$23,000 per annum. Senate Bill 1240 was passed by the General Assembly on November 22, 1974, was signed by the Governor November 27, 1974 and took effect on November 27.

The terms of the newly elected County Clerk, County Treasurer, and County Sheriff of LaSalle County began on December 2, 1974. Since P.A. 78-1251 went into effect before their terms of office began, those county officials are entitled to receive the benefits of that Act.

The various counties of the State of Illinois have only the express powers granted to them by the Constitution or by law plus those powers which are necessarily implied to carry out such expressed powers. (Ill. Const., art. VII, sec. 7; Heidenreich v. Ronske, 26 Ill. 2d 360.) It is the duty of the county board to fix the salary of the county clerk, county treasurer and county sheriff within the minimum and maximum amounts set by the General Assembly. Where the county board has failed to fix the compensation of a county officer it remains a continuing duty and the county board can be forced by mandamus to perform this duty. (Purcell v. Parks, 82 Ill. 346; Foote v.

Honorable Frank X. Yackley - 4.

Lake County, 109 Ill. App. 312.) The county board must comply with the statutory directive of the legislature and provide their newly elected officials with a minimum salary of \$16,500 per annum. The board may not however set the salaries of their officials above the \$16,500 per annum level. Under the statute in effect before P.A. 78-1251 the county board was free to set the salaries of their officials between \$12,500 per annum and \$23,000 per annum. Having determined that a salary of \$15,000 per annum would be paid, raising the salary above the new statutory minimum of \$16,500 would have to be construed as a raise in salary. (See; Smith v. County of Bureau, 241 Ill. App. 117.) A raise in salary at this date, after the terms of office have commenced is prohibited by section 9(b) of article VII of the Illinois Constitution of 1970 which provides 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."

Your letter also indicates that you feel it is too late to amend the budget of the county board. I would call your attention to section 3 of "AN ACT in relation to the budget of counties

Honorable Frank X. Yackley - 5.

not required by law to pass an annual appropriation bill." (Ill. Rev. Stat. 1973, ch. 34, par. 2103.) That section reads as follows:

"After the adoption of the county budget, no further appropriations shall be made at any other time during such fiscal year, except as provided in this Act. Transfers from one appropriation of any one fund to another of the same fund, not affecting the total amount appropriated, may be made at any meeting of the board by a two-thirds vote of all the members constituting such board, * * * By a like vote the board may make appropriations in excess of those authorized by the budget in order to meet an immediate emergency."

Very truly yours,

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