



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

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COMPENSATION:
Increase in Salary of
General Assembly Members
During Term

Honorable Roland W. Burris,
Comptroller, State of Illinois
State House, Room 201
Springfield, Illinois 62706

Dear Comptroller Burris:

The question has arisen as to whether certain additional amounts payable to various officers of the General Assembly, as provided by Public Act 86-27, effective July 7, 1989, are prohibited by the Illinois Constitution. For the reasons that follow, it is my opinion that the additional amounts payable under Public Act 86-27 are salary increases in contravention of article IV, section 11 of the Illinois Constitution, and thus are prohibited from taking effect during the current term of any member of the General Assembly.

Public Act 86-27, inter alia, increased the additional amounts previously authorized to be paid to members of the General Assembly holding leadership positions, and also created new leadership positions and authorized the payment of additional amounts to the members holding those positions. Section 1 of "AN ACT in relation to the compensation and emoluments of members of the General Assembly", as amended by Public Act 86-27 (Ill. Rev. Stat. 1987, ch. 63, par. 14, as amended), now provides, in pertinent part:

"Each member of the General Assembly shall receive an annual salary of \$28,000 or as set by the compensation Review Board, whichever is greater. The following named officers, committee chairmen and committee minority spokesmen shall receive additional amounts per year for their services as such officers, committee chairmen and committee minority spokesmen respectively, as set by the Compensation Review Board or, as follows, whichever is greater: Beginning the second Wednesday in January 1989, the Speaker and the minority leader of the House of Representatives and the President and the minority leader of the Senate, \$16,000 each; the majority leader in the House of Representatives \$13,500; 6 assistant majority leaders and 5 assistant minority leaders in the Senate, \$12,000 each; 6 assistant majority leaders and 6 assistant minority leaders in the House of Representatives, \$10,500 each; 2 Deputy Majority leaders in the House of Representatives \$11,500 each; and 2 Deputy Minority leaders in the House of Representatives \$11,500 each; the majority caucus chairman and minority caucus chairman in the Senate, \$12,000 each; and beginning the second Wednesday in January, 1989, the majority conference chairman and the minority conference chairman in the House of Representatives, \$10,500 each; beginning the second Wednesday in January, 1989, the chairman and minority spokesman of each standing committee

of the Senate, except the Rules Committee, the Committee on Committees, and the Committee on Assignment of Bills, \$6,000 each; and beginning the second Wednesday in January, 1989, the chairman and minority spokesman of each standing and select committee of the House of Representatives, \$6,000 each. A member who serves in more than one position as an officer, committee chairman, or committee minority spokesman shall receive only one additional amount based on the position paying the highest additional amount. The compensation provided for in this Section to be paid per year to members of the General Assembly, including the additional sums payable per year to officers of the General Assembly shall be paid in 12 equal monthly installments.
* * *

* * *

(Emphasis added.)

Senate Bill 1258 (Public Act 86-27), having passed both houses on June 30, 1989, was approved by the Governor on July 7, 1989. Section 3 of Public Act 86-27 declares that the amendments to section 1 of "AN ACT in relation to the compensation and emoluments of members of the General Assembly" are retroactive to January 11, 1989. An appropriation to fund these increases was passed by the General Assembly on November 3, 1989, and approved by the Governor on December 5, 1989. (Public Act 86-956.)

Article IV, section 11 of the Illinois Constitution provides:

"A member [of the General Assembly] 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."

This provision prohibits changes in salary, but not in allowances, during the term for which a member is elected.

An analysis of the policy embodied in section 11 of article IV is essential to resolving the question of constitutionality.

In determining the meaning of a constitutional provision, it is appropriate to consider the intent of the drafters at the time of its adoption. (Sayles v. Thompson (1983), 99 Ill. 2d 122, 125.) With respect to the several provisions in the Illinois Constitution of 1870 relating to salaries payable to public officers, including legislators, it was stated, in a reference work prepared to assist the members of the Sixth Constitutional Convention, that:

"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
* * *

* * *

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."

(G. Braden and R. Cohn, The Illinois Constitution: an Annotated and Comparative Analysis 476-7 (1969).)

As indicated in the Report of the Committee on the Legislature, Sixth Illinois Constitutional Convention, it was the intent of the drafters of article IV, section 11, to continue the policy, founded in the second principle cited by Braden and Cohn, that

no member of the General Assembly could benefit from a pay raise until re-elected for another term. (VI Record of Proceedings, Sixth Illinois Constitutional Convention 1317, 1392.)

This constitutional provision was cited by the court in Winokur v. Bakalis (1980), 84 Ill. App. 3d 922, 926, in upholding the validity of salary increases for members of the General Assembly enacted after their election but before their new terms began:

" * * *

* * * the members of the General Assembly cannot effect a change in salaries during the two-year term for which they are presently serving. A change in salaries will only become effective during the next successive term of the legislature. Thus, the clear and unambiguous meaning of the [Constitution] is to prohibit a change in legislative salaries from taking effect during the term in which the law authorizing said change is enacted.

* * *

Further, in Cullom v. Dolloff (1880), 94 Ill. 330, 336, the court stated that the intention of the constitutional prohibition against the change in county officers' compensation was to assure that compensation was unalterably fixed for the term of office of the officer. As was said therein, with respect to the provision of the Illinois Constitution of 1870 applicable to compensation of municipal officers:

" * * *

* * * The object sought to be accomplished by the section of the constitution under

consideration is to take it out of the power of municipal officers of the class designated, elected upon an implied agreement to accept the burdens of the office as they exist, to increase the emoluments of the office after election.

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Baumrucker v. Brink (1940), 373 Ill. 82, 85-86.

The same rationale is applicable to article IV, section 11 of the Illinois Constitution of 1970. See, Winokur v. Bakalis (1980), 84 Ill. App. 3d 922, 926.

The courts have historically been strict in their application of prohibitions against changes in compensation for public officers. One who accepts an office where the salary is fixed by law is required to perform the duties incident thereto for such salary and cannot legally claim additional compensation for the discharge of such duties. (Koons v. Richardson (1923), 227 Ill. App. 477, 482.) Even the imposition of additional duties upon an officer during his term will not justify an increase in salary during the term. Peabody v. Forest Preserve District of Cook County (1926), 320 Ill. 454, 463 and cases cited therein.

The determination of the applicability of article IV, section 11 of the Constitution to the additional amounts in question requires the resolution of three issues - firstly, whether these "additional amounts" constitute salary or could be considered allowances; secondly, whether such compensation

constitutes salary for serving as a General Assembly member, as distinct from holding another office; and lastly, if these additional amounts are increases in salary, whether article IV, section 11, prohibits them from being paid to General Assembly members during their current terms.

Based upon the expressed intent of the drafters of the Constitution, it is clear that the term "allowances" was not intended to include payments such as those here at issue. Although the Illinois Constitution of 1870 authorized the General Assembly to fix amounts for mileage and the compensation of its members by law, it allowed only \$50 per session to each member to cover "postage, stationery, newspapers and all other incidental expenses and perquisites" (Ill. Const. 1870, art. IV, sec. 21). In the new Constitution, the drafters sought to remedy the "crippling effects" of the inflexible provisions of the 1870 Constitution by allowing the General Assembly to fix not only compensation, but "allowances for necessary and essential expenses incurred while performing official legislative duties" as well. (Report of the Committee on the Legislature, VI Record of Proceedings, Sixth Illinois Constitutional Convention 1317, 1392; Remarks of Delegate Laurino, Verbatim Transcript of Debates, IV Record of Proceedings, Sixth Illinois Constitutional Convention 2705.) The debates indicate that the drafters distinguished between "salary" or "compensation", on the one hand, and "allowances"

for necessary expenses such as mileage, secretarial staff and office expenses on the other. (See, Verbatim Transcript of Debates, IV Record of Proceedings, Sixth Illinois Constitutional Convention 2706 and 2889-90.) In addressing an amendment offered by Delegate Netsch that allowed the General Assembly to change allowances during the term, Delegate Elward remarked:

" * * *

I think that we must draw a clear distinction, as I believe Delegate Netsch is seeking to do here, between [salary and] the allowances--and maybe she intends to cover things like mileage which do go personally to the members--but surely the secretarial allowances and office expense allowances, these should not be under a two-or four-year ban. Nobody else in the Executive or Judicial Department is under that kind of a ban. It is not money that goes in any way directly or indirectly into the pocket of the legislator, and I would support her amendment.

* * *

(Emphasis added.) (Verbatim Transcript of Debates, IV Record of Proceedings, Sixth Illinois Constitutional Convention 2890.)

The drafters of the Constitution clearly intended the term "allowance" to encompass only payments for expenses actually and necessarily incurred in the performance of official business, and not compensation paid directly to the member. Examples of allowance items include per diem payments and the amounts authorized to be expended by General Assembly

members for staff and office expenses. (See, Ill. Rev. Stat. 1987, ch. 63, pars. 14, 15, as amended by Public Act 86-27.) The increase of such allowance amounts during a legislator's term, as is provided in Public Act 86-27, is permissible.

The salary of a public officer, in contrast to an allowance, is the personal compensation paid to the officer for his or her personal services as a public official (People v. Adams (1896), 65 Ill. App. 283, 286-87); it is a fixed annual or periodic payment not dependent upon the amount of services rendered. (Commonwealth Life and Accident Insurance Co. v. Board of Review of the Department of Labor (1953), 414 Ill. 475, 485.)) The "additional amounts" provided for in Public Act 86-27 are "compensation" for official services, and are stated in terms of fixed dollar amounts payable per year in 12 equal monthly installments. (Ill. Rev. Stat. 1987, ch. 63, par. 14, as amended by Public Act 86-27, effective July 7, 1989.) Further, these amounts are defined as "salary" in The Illinois Pension Code (Ill. Rev. Stat. 1987, ch. 108 1/2, par. 2-108, as amended by Public Act 86-27). It is my opinion that the additional amounts payable to the officers, committee chairmen and committee minority spokesmen by virtue of Public Act 86-27, therefore, constitute salary and not allowances.

The second issue is whether these payments are intended as compensation for official service as a member of

the General Assembly, or for services as a holder of office other than that of General Assembly member. I note that the officers, committee chairmen and committee minority spokesmen who receive additional compensation are first and foremost members of the General Assembly who are chosen by the membership of the General Assembly to fill those positions. These positions do not represent distinct public offices held separate and apart from membership in the General Assembly. The members holding these positions exercise varying degrees of responsibility and power, and the General Assembly has, by statute, made differentiations in compensation reflecting the levels of its organization. This is not improper where the offices are created and the salaries are fixed prior to the beginning of a member's term.

Nonetheless, it is clear that the additional salary received by a member of the General Assembly for his or her services as an officer of the General Assembly or its committees, is salary within the constitutional prohibition against increases or decreases in salary during the term. To construe section 11 of article IV of the Constitution otherwise would render it wholly meaningless, since the prohibition could be avoided simply by assigning all members of the General Assembly some leadership position within the body that would entitle them to additional compensation that could be changed

at will. Therefore, it is my opinion that additional compensation payable for services as a General Assembly officer, committee chairman or committee minority spokesman constitutes salary for services as a member of the General Assembly, and not a separate office, for purposes of article IV, section 11 of the Illinois Constitution.

With respect to the third issue to be resolved, the increases for which Public Act 86-27 provides would clearly take effect during the terms for which members of the General Assembly who passed it have been elected.


Terms of General Assembly members elected in November, 1988, began on January 11, 1989, the second Wednesday of January, 1989. (See, Tupy v. Oremus (1982), 105 Ill. App. 3d 932, 939, citing Winokur v. Bakalis (1980), 84 Ill. App. 3d 922.) Although section 1 of Public Act 86-27 expressly declared its provisions to be retroactive, the Act also provided that it would take effect upon becoming law. (Public Act 86-27, § 3.) The salary increases of section 1 of Public Act 86-27 thus became effective on July 7, 1989 (Ill. Const., art. IV, § 10; Ill. Rev. Stat. 1987, ch. 1, par. 1201), a date falling within the current terms of office of all General Assembly members.

In summary, it is clear that the additional amounts payable under Public Act 86-27 to officers of the General Assembly constitute salary for their services as members of the

Honorable Roland W. Burris - 12.

General Assembly, and that the increase in salary would become effective during the terms for which the members who passed the increase were elected. It is, therefore, my opinion that article IV, section 11 of the Illinois Constitution prohibits these salary increases from taking effect during the current term of any member of the General Assembly.

Very truly yours,



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