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December 1, 2017

To: UCCI Membership

Re: County Officer Compensation

Issue:

When may a County change the compensation of their respective elected officers?

Analysis:

The Illinois Constitution provides that “[a]n 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.”¹ The Local Government Officer Compensation Act² (the “Act”) provides for the timing of fixing the compensation of elected officials of Illinois school districts and units of local government. As a unit of local government³, a county and its officers are subject to the provisions of both the Constitution and Act. The Act states:

Notwithstanding any other law to the contrary, the compensation of elected officers of school districts and units of local government, including home rule units, which compensation is to be fixed by that school district or unit of local government, shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed.⁴

Notably, the Generally Assembly provided that the Act controls regardless of any other statute. Additionally, a county’s status as non-home rule or home rule does not affect the Act’s applicability.⁵ Therefore, regardless of any provision within the Counties Code⁶ or county ordinance or resolution,

¹ Ill. Const. 1970, Art. VII, § 9 (Salaries and Fees).

² 50 ILCS 145/1 *et seq.*

³ “Units of local government” means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.” Ill. Const. 1970, Art. VII, § 1 (Municipalities and Units of Local Government).

⁴ 50 ILCS 145/2 (emphases added).

⁵ 50 ILCS 145/3.

⁶ 55 ILCS 5/1-1001 *et seq.*

the compensation of all elected county officer's must be fixed at least 180 days before the beginning of the terms of those officers.

For example, the terms of county board members commence the first Monday of the month following the month of election⁷, so county board member candidates who are elected in November of 2018 will commence their terms on December 3, 2018. Consequently, the compensation for those county board members taking their seats on December 3, 2018 must have their compensation fixed no later than June 6, 2018. In the case of county board members, the Counties Code provides that (1) "[t]he chairman of the county board shall receive such additional compensation as determined by the county board in reapportioning the county;" and (2) "[c]ounty board members and the chairman of the county board are also entitled to travel and expense allowances as determined by the county board."⁸ Therefore, any additional compensation to be received by a chairman, whose term also commences the first Monday of the month following the election⁹, and the amounts to be received by county board members and chairmen alike for travel and expenses must all be fixed by June 6, 2018.

Apart from fixing the amount of compensation, Section 2-3008 of the Counties Code provides for the determination of the method of compensation for members of a county board and states that "[a]t the time it reapportions its county under this Division, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis, on an annual basis or on a combined per diem and annual basis, and shall fix the amount of that salary."¹⁰ However, "[i]f the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or by resolution. Those changes shall not however, take effect during the term for which an incumbent county board member has been elected."¹¹ This Section of the Counties Code and the Act should be interpreted in harmony with one another because they have a common purpose.¹² Therefore, construing the two with reference to each other would dictate that any ordinance or resolution changing the method of compensation should be adopted at least 180 days before the beginning of the terms of the officers whose method of compensation is to be set by such an ordinance or resolution.

Counties should also carefully contemplate changes to fringe benefits available to elected officials. The Attorney General has opined that "term 'salary' in article VII, section 9(b) of the Constitution, is synonymous with 'compensation' and fringe benefits are clearly a part of an officer's compensation."¹³ The Attorney General further opined that provision of local government funded group health insurance to a local governmental officer constitutes additional compensation and therefore coverage generally may not be initiated during the current term of office of incumbent

⁷ 55 ILCS 5/2-3009.

⁸ 55 ILCS 5/4-10001; Reimbursement of travel related expenditures is subject to the Local Government Travel Expense Control Act (50 ILCS 150 *et seq.*) and any ordinance or resolution passed pursuant to that act.

⁹ 55 ILCS 5/2-3007.

¹⁰ 55 ILCS 5/2-3008.

¹¹ *Id.*

¹² See Knolls Condo. Ass'n v. Harms, 202 Ill. 2d 450, 459 (2002). ("Statutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible. Even when an apparent conflict between statutes exists, they must be construed in harmony with one another if reasonably possible.")

¹³ Ill. Att'y Gen. Op. No. 94-022, at pg. 3 (October 25, 1994) (Citations omitted).

members without violating the Constitution.¹⁴ The Attorney General, in a separate opinion, noted the statutes that require that compensation must be set before the beginning of the terms of office and that “[h]ealth insurance benefits, if any, are part of the compensation to be so fixed.”¹⁵ Accordingly, health insurance is a fringe benefit which is part of an elected official’s “salary” as contemplated by the Constitution and “compensation” as contemplated by the Act.

Conclusion:

Regardless of any other statutory provision or county ordinance or resolution, the amount of compensation and method of compensation of an elected county officer must be fixed at least 180 days before the beginning of that officer’s term. Similarly, fringe benefits of an elected officer, which may be considered compensation, should be fixed at least 180 days before the beginning of that officer’s term.

At the request and direction of UCCI this opinion was prepared by
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Herman G. Bodewes



Jason E. Brokaw

¹⁴ *Id.*

¹⁵ Ill. Att’y Gen. Op. No. 96-039, at pg. 2 (December 3, 1996).