

OFFICERS - Term of office of municipal officers shall date
CITIES from the election, and their salaries cannot be
increased during the term for which they were elected.

April 23, 1936.

Honorable A. Glenwood Gilliland
Attorney at Law
Cameron, Missouri



Dear Sir:

This will acknowledge receipt of your request for
an opinion, which reads as follows:

"We have a situation arising in our City af-
fairs upon which we need a legal opinion.
Certain of the City officials are not satis-
fied with local opinions from members of the
bar. May I relate the facts and cite statutes
concerned?

"Our City election was held on April 7, 1936,
at which time the usual city officers were
elected as becoming to a Third Class City.
About midnight of the night before, the
City Council was in regular session. They
passed a new and proper ordinance which set
the Mayor's yearly compensation at \$300.00.,
the City Attorney's compensation at \$200.00
and fees, etc. In the past several years,
the City Attorney has received \$300.00 per
year. Thus, the sum of \$100.00 was deducted
from the City Attorney's compensation.

"It is our custom for the old Council to meet
again before the new council takes office.
At this last meeting of the old council, and
before the new Mayor, new City Attorney, and
new council members had been sworn in, an or-
dinance was presented putting the City At-
torney's compensation back to the regular
\$300.00. The Mayor brought up the idea that
since the new City Attorney was elected, al-
though not yet qualified by being sworn into
office, his salary could not be raised.

" Under Article 14, Section 8 of the Missouri Constitution, the compensation of a municipal officer cannot be increased during his term of office. Then, the whole question boils down to this: When does a newly elected officer's term begin? From the date of his election, or from the date upon which he qualifies? If upon the latter, could our City Attorney's salary be changed any time up to the time when he is sworn into office. The Statutes, Section 6723, provide that the officers shall be elected for two years, and until their successors are duly elected and qualified.

" The new council has now taken office, but the City Attorney has refused to be sworn in until they ascertain whether or not the council can raise his salary to the former amount of \$300.00 per year. The Mayor and Council are willing to do it, if it can legally be done. The old City Attorney is therefore holding over, until his successor qualifies.

" Under these facts, will your office be so kind as to render an opinion as to what the City Council can do in this case. Can they pass an ordinance leaving all other salaries at the sum they are now fixed on, and include in there a provision setting the City Attorney's salary at \$300.00, in place of the now provided sum of \$200.00? Please bear in mind, that the newly elected City Attorney has not yet taken the oath of office or entered upon his duties.

" I realize that your office is likely extremely busy at this time, but I shall appreciate, on behalf of the Mayor and City Council of Cameron, Missouri, your every effort to render an immediate opinion on this question. The next regular meeting of the City Council is to be held on May 4, 1936. If I can have your opinion before that date, I shall certainly appreciate it.

" I have taken the position that a person elected to an office is not an officer until he is sworn into office, and that his salary can be increased

any time before he takes his oath. Others have contended that his term of office begins from the time he is elected, and that after that date (April 7th in this case) his salary cannot be increased."

Section 6721, of R. S. Mo. 1929, relating to election of municipal officers of a city of the third class, provides:

"A general election for the elective officers of each city of the third class shall be held on the first Tuesday in April * * and every two years thereafter. * * "

And further in part:

"* * Any city organizing under the provisions of this article may elect a mayor and such other officers as may be necessary to carry this article into effect, who shall hold office until the second Tuesday in April thereafter, and until their successors are elected and qualified."

Section 6723 of R. S. Mo. 1929, relating to the terms of office for elective officers of a city of the third class, provides as follows:

"The following officers shall be elected by the qualified voters of the city, and shall hold their offices for two years, and until their successors are duly elected and qualified, to-wit: A Mayor, marshal, attorney, police judge, assessor, collector and treasurer. The attorney shall be a person learned in the law."

You will note that the above section of the statute does not specifically set forth the term of office, i.e., the time that the term shall commence or end, except to say that

the officers shall hold their offices for two years, and until their successors are duly elected and qualified. Inasmuch as Section 6721, supra, provides that the election of officers of each city of the third class are to be held on the first Tuesday in April and every two years thereafter, we construe this to mean that the statutory period of the term commences from the date of the election. In this connection, we find that the general rule is stated in 46 Corpus Juris, at page 966:

" ** where no time is fixed by the constitution of statute the term begins, in the case of elective offices, on the day of election, ** "

In the case of People, by Fleming, Attorney General ex rel. Quereau vs. Hamrock, 222 Pac. 1.c. 392, the Supreme Court of Colorado said:

"It is obvious that, where an election is necessary, a term will not begin until after an election is held."

In the case of People ex rel. Holdom vs. Sweitzer, 117 N. E., 1.c. 628, the Supreme Court of Illinois, in passing upon the question as to when the terms of office of circuit judges in that particular state began and ended, said:

"The term of office as fixed by law is sometimes used interchangeably with the term or time of occupancy of the incumbent of such office, but it must be distinctly borne in mind, that the term of office as fixed by law is entirely different from the period of time such office is held by the incumbent thereof, sometimes referred to as the term. The general rule seems to be that the term of office, when not fixed as to the date of its beginning and ending by a Constitution or statute, begins in the case of elective offices on the date of election."

A person having been duly elected to a particular office by the people has thus derived his title to the of-

office from the people, but despite his or her having acquired the title to the office by reason of election, the statute imposes on the person so elected an obligation that such person be qualified. In this respect, under the provisions of Section 6744 of R. S. Mo. 1929, the provision is made that every officer of the city, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation before some court of record in the county or justice of peace in the township or the city clerk or police judge, that he possesses all the qualifications prescribed for his office by law.

In the instant inquiry, the city attorney, under the provisions of Section 6723, supra, shall be a person learned in the law. Under Section 6744, supra, it is further provided that if any person elected or appointed to any office shall fail to take and subscribe to such oath or affirmation, his office shall be deemed vacant.

Article XIV, Section 8 of the Constitution of Missouri provides:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

In the case of *Folk vs. St. Louis*, 250 Mo., l.c. 134, the Supreme Court, in discussing the object of the above quoted part of the Constitution, said:

"The object of section 8, article 14, of the Constitution of Missouri, prohibiting an increase of compensation or fees of certain officers during their terms, is apparent. When any popular individual is elected to a public office his influence with the legislative department of the State is likely to be very great; and, consequently, the General Assembly may be easily persuaded that the compensation of the aforesaid popular individual is too small, and, at his suggestion,

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increase his salary or other compensation to an unreasonable extent. This is particularly true where the popular individual is elected to an office which enables him to reward his friends with official patronage or other official favors.

"It was to prevent persons while possessed of the prestige and influence of official power from using that power for their own advantage that the framers of our organic law ordained that salaries of public officers should not be increased during the terms of the persons holding such offices."

It appears from your request for an opinion that the city attorney-elect refuses to assume the office until such time as the present city counsel increases the salary of the office to what it was formerly before the old counsel passed the "midnight ordinance", reducing the city attorney's salary. Since the salary, incident to the office of the city attorney was \$200.00 at the time of the election of the municipal officers, the city council would have no right to increase the salary during the legal term, i.e., from April 7, 1936 to April 7, 1938.

The propriety of such an ordinance as passed we have not in the course of this opinion discussed, as we deem it not material for the conclusion reached.

CONCLUSION.

In light of the above, it is our opinion that the term of office of the city attorney begins from the date of election and that the salary incident to the office at the time of election cannot be increased during the legal term.

Further concluding, in the words of the Supreme Court of New Jersey, in the case of Haight vs. Love, 39 N. J. Law Reports, 476, l.c. 479, it is said:

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"The beginning of a term of office ought not to be left to the will of the officer himself. If not fixed by law, it must begin as soon as he can, by his own act, enter upon it."

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

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