

Opinion No. 53-5683

February 18, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable H. Vearle Payne New Mexico State Senate Santa Fe, New Mexico

{*77} In your letter dated February 12, 1953, you request an opinion as to whether a city police magistrate may have his pay increased during the term for which he is elected.

Art. 4, § 27 of the New Mexico Constitution provides, in part:

". . . nor shall the compensation of that officer be increased or diminished during his term of office except as otherwise provided in this constitution."

Sec. 14-1019 and Sec. 14-1120 of the 1941 Compilation pertain to designation of a justice of the peace in cities under a commission manager form of government, § 1019 pertaining to cities of more than 10,000 population and § 1120 pertaining to cities with a population between 3,000 and 10,000. Both of these sections provide that the justice of the peace so designated as police judge shall hold office at the will of the commission. Since there is no fixed term of office, in such instances the constitutional provision above quoted would not apply and the salary could be increased. In this connection see **State ex rel Gilbert v. Board of Commissioners of Sierra County, 29 N.M. 209.**

Under § 39-104 of the 1941 Compilation provision is made for election of police judges in cities, towns and villages generally for a term of two years. Police judges elected under the provisions of this law would fall within the contemplation of the constitutional provision above mentioned, and their salaries could not be increased during their terms of office.

We trust this satisfactorily answers your question.

By: C. C. McCulloh

Assist. Attorney General