

Opinion No. 54-5985

June 28, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*442} In your letter dated June 17, 1954, you enclosed a resolution from the board of county commissioners of Quay County relative to Ch. 174, Laws of 1953, authorizing the boards of county commissioners in first-class counties, having a valuation of twenty million dollars or less, to set salary schedules with the approval of the State Tax Commission at the time of the hearing on the county budgets.

You request an opinion on the following question: "In the event the salaries of elected officials and deputies are set on the basis of a second-class county, may the salaries of deputies be subsequently increased as of July 1, 1954 and may the salaries of elected officials be subsequently {*443} increased after January 1, 1955, provided revenues are available during the fiscal year?"

The statute pertaining to this matter provides as follows:

"Provided, however, that counties of the first class with an assessed valuation of twenty million dollars or less shall apply a salary schedule of not more than the salary schedule applicable to counties of the first class with an assessed valuation of over twenty million dollars and not less than the salary schedule applicable to counties of the second class. The salary schedule for counties of the first class with an assessed valuation of twenty million dollars or less shall be determined by the board of county commissioners and approved by the State Tax Commission at the time county budgets are determined and approved. The salary schedule in effect on the day the term of office of any county officer begins shall not be increased or decreased during such term of office."

Art. 4, Sec. 27 of the State Constitution provides as follows:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or decreased during his term of office except as otherwise provided in this Constitution."

Since a deputy county official does not have a fixed term of office and serves at the pleasure of the appointing officer, the constitutional prohibition against increasing or decreasing salary during the term of an officer would not apply to a deputy. The same reasoning would apply to the statutory provision contained in the last sentence above quoted.

Thus it is our opinion relative to deputies' salaries that the same could be increased after the budget is approved provided funds are available for that purpose, if a budgetary increase has been approved by the State Comptroller, the Tax Commission and the Attorney General as provided by law. Such increase, however, could only be prospective and not retroactive to July 1, 1954, without violating the foregoing constitutional provision.

As to elected officials' salaries, if a budgetary increase is approved prior to the beginning of a new term on January 1, 1955, the elected officials could be paid the increased salaries provided for at the beginning of their term, however, after the beginning of their term of office, their salary could not be increased or decreased during such term.

By: C. C. McCulloh

Assist. Attorney General