

Opinion No. 59-100

August 13, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mrs. Lois N. McKinley County Clerk /- Torrance County Estancia, New Mexico

{*158} This is in response to your letter of recent date in which you pose the following questions:

1. Will county officials of a second class county receive increases in pay beginning July 1, 1959, as provided by Sec. 15-43-4.5 N.M.S.A., 1953 Comp., (PS).
2. Will deputy county officials of a second class county receive increases in pay beginning July 1, 1959, as provided by Sec. 15-43-4.5 N.M.S.A., 1953 Comp., (PS).
3. Will County Commissioners of a second class county receive increases in pay beginning July 1, 1959, as provided by Sec. 15-43-4.5 N.M.S.A., 1953 Comp., (PS).

My answer to your first question is in the negative.

My answer to your second question is yes.

My answer to your third question is in the negative.

In support to my answer to your first question, I will say that this office has rendered opinions time after time to the effect that by virtue of the provisions of Article IV, Section 27, Constitution of New Mexico, there is a definite prohibition against increasing or diminishing the compensation of any officer during his term of office.

The pertinent portion of Article IV, Section 27 reads as follows:

"* * *; nor shall the compensation of any officer be increased or diminished during his term of office, except as **otherwise** provided in this Constitution." (Emphasis Ours)

I find nothing **otherwise** provided in our Constitution.

In opinion No. 5985 rendered on June 28, 1954, this office held that the salaries of elected officials could not be increased or decreased during their term of office. In our Opinion No. 5923 dated March 29, 1954, we held that County School Superintendents holding office at the time of the passage of Chapter 104, Laws of 1953, were not entitled to the increases provided therein during their respective terms of office. In our Opinion No. 57-67 dated April 3, 1957, this office held that a County School Superintendent is a county officer and that his salary could not be increased during his term of office.

In our Opinion No. 58-221 dated November 6, 1959, we held that a Police Judge serves for a fixed term and an increase in pay during his term of office is precluded by Article IV, Section 27, New Mexico Constitution, supra.

By reason of the provisions of Article IV, Section 27, New Mexico Constitution, which has been construed by this office in the above numbered opinions as well as in other opinions of this office almost too numerous to mention, it is my ruling that the county officials of a second class county cannot, during their respective terms of office, be paid the increased salaries provided in Sec. 15-43-4.5 N.M.S.A., 1953 Comp., (PS).

In support of my answer to your second question, I will state that 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 a salary during the term of an officer does not apply to a deputy.

This position is supported by our Opinion No. 5985 dated June 28, {*159} 1954, and by our Opinion No. 5285 dated August 26, 1949. The questions put to this office in the requests which were answered in said Opinions No. 5985 and No. 5285 were almost identical with your question regarding deputies.

It is my opinion that the increased salaries granted to deputy county officials become effective on the date mentioned in your letter, to-wit: July 1, 1959.

In support of my answer to your third question, I will say that a county commissioner is a county official and the same constitutional prohibition preventing the increase or diminution of the compensation of any officer during his term of office would apply. In other words, the reasoning in support of my answer to your first question is equally applicable to the increase in salaries of commissioners of second class counties, provided by Sec. 15-43-4.5 N.M.S.A., 1953 Comp., (PS).

The salary of commissioners of a second class county cannot be increased or diminished during their respective terms of office.

By: CARL P. DUNIFON,

Assistant Attorney General