

Opinion No. 67-02

January 6, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Luis L. Fernandez, Chief Local Government Division Department of Finance and Administration Santa Fe, New Mexico

QUESTION

FACTS

Under Section 14-11-12, N.M.S.A., 1953 Compilation (since repealed under Section 14-11-4, N.M.S.A., 1953 Compilation (1965 P.S.)), Tucumcari's police judge was elected to a term that expired on February 6, 1967. Now, the length of a term such as his is set by Section 37-1-4, N.M.S.A., 1953 Compilation for two years. Further, under Section 14-8-7(B) (1965 P.S.), the length of the present judge's term was extended until the first Tuesday of March of 1968.

On March 1, 1966, the elected police judge began his term of office. On November 1, 1966, he resigned. A former police judge was appointed to fill out the duration of the term. As mentioned, that term, under the old statute would have ended on February 6, 1966. Under the new statute, the term is extended thirteen months.

The city commission wishes to increase the judge's salary. The desired increase would be carried out through resolution passed prior to February 7, 1967. The increase would take effect during the thirteen month extension. The judge receiving the benefits of the increase would be the judge presently holding the office.

QUESTION

Under the above facts, may the judge's salary be increased prior to February 6, 1967, with the increase to take effect sometime during the thirteen month extension of his term?

CONCLUSION

No.

OPINION

{*3} ANALYSIS

Article IV, Section 27 of the Constitution of the State of New Mexico states:

"Extra Compensation. 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 diminished during his term of office except as otherwise provided in this Constitution."

The word "officer" in this section is broadly interpreted. An officer is a public officer if the office he holds is elective "for a definite and certain tenure in the manner provided by law . . . (and) his duties affect and are to be exercised for the benefit of the public for a stipulated compensation paid out of the public treasury . . ." **State, ex rel Gilbert, et al. v. The Board of Commissioners of Sierra County**, 29 N.M. 209, 222 P. 2d 654 (1923). Obviously, the police judge in question fulfills all these requirements. He is therefore, an "officer" under the constitutional section.

It is true that the length of the present term is greater than under the old statute. But the time served is still the present judge's term. It's duration was simply extended by the legislature, Section 14-8-7(B), supra. The term is for a definite and certain duration. Under the constitutional provision and attendant cases, it is the opinion of this office that the salary of the police judge may not be raised during his term of office, so as to affect him. The judge's term includes the additional thirteen months under Section 14-8-7 (B), supra.

Further, it would violate Section 14-9-4, N.M.S.A., 1953 Compilation (1965 P.S.) of the Municipal Code to increase the police judge's salary during the term to which he was elected or appointed.

By: Donald W. Miller

Assistant Attorney General