

Opinion No. 69-129

November 13, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General James C. Compton, Jr.,
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TO: Edward P. Moya, Chief, Local Government Division, Dept. of Finance &
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QUESTIONS

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May the Village of Milan legally increase the remuneration to its municipal magistrate?

CONCLUSION

See analysis.

OPINION

{*208} ANALYSIS

"The qualifications of municipal judges, bond required and salary received **shall be provided by ordinance of the municipality.**" (Emphasis added.) Section 37-1-3, N.M.S.A., 1953 Compilation. By using the phrase "shall be provided by ordinance of the municipality," the Legislature intended that the municipal magistrate's salary must be determined by a validly enacted municipal ordinance. For the requisites of a valid ordinance, see Section 14-16-1 et seq., N.M.S.A., 1953 Compilation. There is no other statutory provision enabling a municipality either to pay this salary or to remunerate the municipal judge for his services, without first enacting such an ordinance. It should be noted in passing, however, that the municipal magistrate's salary cannot depend upon arrests and convictions for violations under the Motor Vehicle Code. Section 64-22-16, N.M.S.A., 1953 Compilation (1969 P.S.).

When the Village of Milan established its municipal magistrate court, the ordinance did not provide for the salary to be received by the municipal judge. The municipality may reimburse the judge for his legitimate expenses, providing that they are itemized and meet other procedural requirements. But mere attempts to provide the judge a salary under the guise of reimbursing him for his expenses are insufficient to comply with the requirement that a valid ordinance provide the judge's salary.

Until such time as a valid ordinance provides for such a salary, therefore, the Village of Milan may not legally pay remuneration to its municipal magistrate. Since no salary has

been provided, there can be no increase as such and the question cannot be answered directly.

Whenever a valid ordinance does provide a salary for the municipal judge, the Village of Milan may legally pay the judge for his services. For the problems which may arise at the time and for a resolution of those problems see Attorney General Opinions Nos. 67-2, issued January 6, 1967, and 69-2, issued January 9, 1969.