

Opinion No. 75-64

December 1, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: E. H. Williams, Jr. District Attorney Third Judicial District Dona Ana County Courthouse, Room 207 Las Cruces, New Mexico 88001

QUESTIONS

FACTS

Annual salaries for county assessors are provided for in Sections 15-43-4 through 15-43-4.8, NMSA, 1953 Comp. (1973 Supp.). Additional compensation may be authorized for county assessors if they hold one or more "appraisers' certificates." Section 15-38-1.3, NMSA, 1953 Comp. (1973 P.S.). The Dona Ana County Assessor assumed office on January 1, 1975, and he has been receiving the additional compensation for which he was qualified pursuant to Section 15-38-1.3, **supra**, since that date. The Deputy Assessor has been receiving a salary which was approved by the County Manager, based on the recommendation of the County Assessor.

QUESTIONS

1. Does the Board of County Commissioners have the authority to adjust the salary of the county assessor by decreasing or eliminating the optional compensation the assessor is lawfully receiving based on appraisers' certificates?
2. Does the Board of County Commissioners have the authority to adjust the salary of the Deputy County Assessor?

CONCLUSIONS

1. See Analysis.
2. Yes.

OPINION

{*172} ANALYSIS

With respect to your first question, Opinion of the Attorney General No. 69-2, dated January 9, 1969, considered a similar situation. That opinion considered the question whether city council {*173} members who were already serving a term in office at the time an ordinance was enacted pursuant to Section 14-9-3, NMSA, 1953 Comp., could nevertheless receive optional compensation for attending council meetings. The opinion

discussed Article IV, Section 27, of the New Mexico Constitution. The rationale as to why Article IV, Section 27, did not prohibit the council members from receiving the compensation is important to an understanding of the factual situation presented here. The opinion stated:

"Article IV, Section 27 of the New Mexico Constitution provides that no law shall be enacted either increasing or decreasing the compensation of any public officer during his term of office. This constitutional provision has been held to apply to all public officers, whether their offices be created by the Constitution or by the Legislature. State ex rel., Gilbert v. Board of County Commissioners, 29 N.M. 209, 222 Pac. 654 (1924).

The purpose of Article IV, Section 27 of the New Mexico Constitution is to secure official independence. Dorman v. Sargent, 20 N.M. 413, 150 Pac. 1021 (1915). In State ex rel. Gilbert v. Board of County Commissioners, supra, the New Mexico Supreme Court stated the purpose of this provision of our Constitution as follows:

'It was designed to protect the individual officer against legislative oppression which might flow from party rancor, personal spleen, enmity or grudge. These could well harass and cripple the officer by reducing his compensation during his service; while, on the other hand, party feeling, blood, or business relations might be combined in such pernicious activity in the form of strong and powerful lobbying as to sway the members of the Legislature and cause the bestowal of an unmerited increase. To obviate these conditions is the purpose of this wise constitutional provision.' Id. at 214.

We fail to see how the above stated purpose is in any way fostered by finding that Article IV, Section 27 of the New Mexico Constitution prohibits public officers from exercising an option to receive compensation already established by the legislature.

It is our opinion that Section 14-9-3, supra, provides for the amount of compensation that will be received by members of the governing body of a municipality under a mayor-council form of government. It is up to the members of the governing body to decide how much compensation, if any, they will receive within the salary limitations set by the legislature. **Article IV, Section 27 prohibits the legislature from either increasing or decreasing the compensation provided for in Section 14-9-3, supra, during the term of office of those members of the governing body now holding office. It clearly does not prohibit members of the governing body from exercising their option, by adopting an ordinance, of receiving their statutory salary"**
(Emphasis added)

In our opinion, the conclusion and the rationale expressed in the foregoing opinion is precisely applicable to the additional compensation provided for county assessors in Section 15-38-1.3. Thus, while Article IV, Section 27 would prohibit the legislature from increasing *{*174}* or decreasing the compensation authorized by Section 15-38-1.3 during the term of office of the county assessor, Article IV, Section 27, clearly does not prohibit the Board of County Commissioners from exercising their option to allow the

county assessor to receive the additional compensation pursuant to Section 15-38-1.3 for which he is qualified.

In our opinion, the intent and purpose of Article IV, Section 27, is not in any way frustrated by allowing assessors to receive additional compensation pursuant to Section 15-38-1.3 for which they are qualified. Once a board of county commissioners exercises its option to allow additional compensation, however, in our judgment, such additional compensation cannot be eliminated or decreased, unless the assessor becomes unqualified to receive the additional compensation. For instance, if an assessor somehow loses his right to hold one or more appraisers' certificates, then the board of county commissioners shall reduce the additional compensation to conform with the assessor's qualification to receive additional compensation pursuant to Section 15-38-1.3. To allow the additional compensation to be reduced for any reason other than lack of an assessor's right to hold one or more appraisers' certificates would clearly violate the intent and purpose of Article IV, Section 27. (See Opinion of the Attorney General No. 69-2, **supra**.) Any other conclusion would be contrary to public policy and could lead to the type of abuse Article IV, Section 27, was designed to prevent. (See **Whittorne v. Turner**, 155 Tenn. 303, 293 S.W. 147, 148 (1927).

Your second question is answered by the language of Section 15-37-16.1, **supra**, which provides:

"COUNTY COMMISSIONERS -- EMPLOYING DEPUTIES AND EMPLOYEES -- EMPLOYING A COUNTY MANAGER. -- A. **A board of county commissioners may set the salaries of such employees and deputies** as it feels necessary to discharge the functions of the county, **except that elected county officials have the authority to hire and recommend the salaries of persons employed by them** to carry out the duties and responsibilities of the office to which they are elected." (Emphasis added)

In our opinion, the county assessor, an elected county official, may **hire** a deputy assessor and **recommend** his salary to the board, but the ultimate authority to set the salary of a deputy assessor resides in the board. Section 15-37-16.1, **supra**. The authority in this instance was exercised by the county manager. The "except" clause of Section 15-37-16.1, **supra**, does not, in our judgment, transfer the salary-setting authority for deputies and the like from the board of county commissioners to elected county officials.

Therefore, the board has the final authority to set the salary of a deputy assessor. Even though this authority was exercised, albeit by the county manager, there is nothing legally to prevent the board from adjusting the salary of the deputy assessor. The provisions of Article IV, Section 27, **supra**, do not apply to a deputy assessor because, unlike the assessor, the deputy assessor does not have a fixed and definite term of office. See **State ex rel. Gilbert v. Board of County Comm'rs of Sierra County**, 29 N.M. 209, 222 P. 654, 31 A.L.R. 1310 (1924).

By: Ralph W. Muxlow II

Assistant Attorney General