

Opinion No. 81-17

July 24, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Representative Clifton L. Moreland, 1924 South 4th Street, Tucumcari, New Mexico 88401

PUBLIC OFFICERS AND EMPLOYEES; MUNICIPALITIES

Synopsis: Subject to applicable law or charter, the governing body of a municipality may enact an ordinance to increase the salary of its members, but members serving during the term in which such an ordinance is enacted cannot benefit from the increase during that term.

QUESTIONS

May the members of a city council increase their compensation during the term for which they were elected?

CONCLUSIONS

No.

ANALYSIS

Compensation for the members of the governing body of a municipality may be authorized pursuant to law or charter. A non-home rule municipality, existing only by virtue of statute, may exercise only those powers which are granted by statute. **Sanchez v. City of Santa Fe**, 82 N.M. 322, 481 P.2d 401 (1971). The authority of a municipality to compensate its governing body is defined at Section 3-10-3 NMSA 1978 which provides that

"A noncharter municipality may provide by ordinance for the compensation of the mayor and other individual members of the governing body. Annual compensation paid to the mayor or another member of the governing body shall not exceed the annual compensation paid to a member of the board of county commissioners of the county in which the non-charter municipality is located."

OPINION

The amount of compensation for county commissioners of the various classes of counties is determined by the legislature. See, Sections 4-44-4 through 4-44-12 NMSA 1978, as amended by Laws 1981, Chapter 14.

Home rule municipalities chartered pursuant to Article X, Section 6 of the New Mexico Constitution may exercise all legislative powers not expressly denied by law. **Apodaca v. Wilson**, 86 N.M. 516, 525 P.2d 876 (1974). Charter provisions authorizing compensation for the members of its governing body need not conform to statutes governing compensation of municipal officers but must be consistent with the Constitution. See, Section 3-15-13 NMSA 1978.

Once set, however, the compensation of a public officer may not be increased during the term for which he was elected. Article IV, Section 27 of the New Mexico Constitution provides that

"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 {246} or diminished during his term of office, except as otherwise provided in this constitution.** " [emphasis added].

This office has previously concluded that members of a city council are subject to the prohibition against increased compensation. Opinion of the Attorney General No. 62-85, dated July 10, 1962, states that

"There is no question but that mayors and councilmen are public officers under the criteria laid down by our Supreme Court in **State v. Board of County Commissioners**, 29 N.M. 209, 222 P. 654. They are persons elected to public office for fixed and definite terms whose functions and duties affect the public."

Thus, subject to applicable law or charter, the governing body of a municipality may enact an ordinance to increase the salary of its members, but members serving during the term in which such an ordinance is enacted cannot benefit from the increase during that term.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General