

Opinion No. 87-05

February 18, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: David A. Garcia, Assistant Attorney General

TO: The Honorable Roman Maes, State Senator, 402 Graham, Santa Fe, New Mexico 87501

QUESTIONS

May incumbent Santa Fe City Council members, unable to receive pay increases voted for new council members but who assume duties and responsibilities not assumed by all members, receive additional compensation for the performance of such duties?

CONCLUSIONS

No.

ANALYSIS

The Santa Fe City Council passed an ordinance in 1985 that increased the salaries of Council members. Councilors serving during the term in which this ordinance was enacted are not eligible to receive the pay raise under the New Mexico Constitution. These Council members wish to assume extra duties and responsibilities in order to receive additional compensation.

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 or diminished during his term of office except as otherwise provided in this constitution.

This provision has been described by the Supreme Court of New Mexico as "...plain and emphatic; the words used are apt, direct, and construe themselves. It positively forbids increasing or diminishing the compensation of any officer during his term of office." State ex rel. Gilbert et al. v. Board of Commissioners of Sierra County, 29 N.M. 209, 213, 222 P 654 (1924). City councilors are "officers" subject to this provision. See Opinion of the Attorney General Number 81-17; see also State ex rel. Gilbert, supra, 29 N.M. at 214. Therefore city councilors serving during the term in which an ordinance is passed increasing councilors' salaries may not benefit from the increase during that term of office. See Opinion of the Attorney General Number 81-17.

Incumbent officers occasionally have received pay increases after the Legislature added new duties to their offices. See Opinion of the Attorney General Number 79-27, (listing a number of examples). In each case, however, where this occurred it was the duties of the office, not the duties of individual officeholders, that were increased. Thus, the facts at hand are distinguishable from the examples noted in Opinion 79-27, which states: "[T]he increase in compensation is paid in exchange for the performance of additional duties not contemplated when the **office** was created and the salary specified." (emphasis added). Additional responsibilities imposed only on particular members of a city council would not be duties that all council members would be legally required to undertake. The duties of the office itself would not be increased under such an arrangement. Therefore an increase in salary for particular council members would not be justified by the "extra duties" theory.

In sum, extra responsibilities not assumed by all councilors would not qualify as additional duties imposed upon the office of city councilor. Therefore the salary of an individual council member may not be increased even if that member personally undertakes extra duties while in office.

Respectfully submitted,

ATTORNEY GENERAL

HAL STRATTON Attorney General