

## **Opinion No. [30-53]**

June 11, 1930

**BY:** J. A. MILLER,

**TO:** Hon. A. R. Streicher, Mayor, Raton, New Mexico.

MUNICIPAL CORPORATIONS -- Officers may receive salary. § 90-614, § 90-607, § 90-616, Code 1929.

### **OPINION**

Reference is made to yours of the 3rd inst. in which you request to be advised whether there is any provision under the laws of New Mexico by which the mayor and city council of the City of Raton can be paid or receive a salary.

In considering this question two statutes in particular are brought to our attention. Section 90-614, Codification of 1929 reads as follows:

"Officers -- Compensation. No mayor, trustee, or alderman shall receive any compensation for his services as trustee or alderman, except as provided by law."

The section just quoted is from Chapter 39 of the Laws of 1884. This act was followed by a later one, Chapter 70 of the Laws of 1891 and which appears in the Codification as Section 90-607. The later act does not in express terms either repeal or amend the former enactment. Although it is thought that the phrase, "except as provided by law," which appears in the earlier enactment, does not necessarily refer to laws then in existence but may be applied as well to future enactment.

Section 90-607 provides for appointive officers of cities; a city marshal, members of the police, city attorney and such other officers as may be by ordinance provided for. The section also provides that the city marshal shall receive such salary, not exceeding \$ 150.00 per month, as may be fixed by ordinance. Provision is also made for the payment of the city clerk and the city attorney and the section closes with these words:

"The city council shall, as early as their last regular meeting before an annual election, fix the salaries and fees of all the officers of said city for the period of one year next ensuing the election and qualification of the officers elected at the next annual election."

There seems to be no question of the propriety of the payment of appointive officers of the city and from the language last quoted the implication seems to be that the statute of later enactment authorizes salaries and fees to be paid the elected officers. There is, however, further provision which appears as Section 90-616, Codification of 1929 and which reads as follows:

"The emoluments of no officer of any city or town shall be increased or diminished during the term for which he shall have been elected or appointed, nor shall any change of compensation affect any such officer during his existing term, unless the office shall be abolished; in which case the emoluments of the office shall cease at the time of the abolishment of the office, and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments have been increased."

Reading together the two sections 90-607 and 90-616, it would appear that the mayor and members of the council of the City of Raton, if they receive any compensation now, must receive only such compensation as was by resolution or ordinance determined prior to the election of officers in April. By section 90-604, provision is made for the election of one mayor, one clerk and one treasurer for the term of two years and the election of aldermen for terms of four years, such election to be held on the first Tuesday of April in each even numbered year.

Since the council as existing just prior to such election had the authority and duty of fixing the fees and salaries for the year next succeeding the election and since such fees and compensation may not be changed during the term of office for which officers were elected, it would appear that there is no statutory authority for the paying of any salary or compensation to the mayor and members of the council of the City of Raton other than that which may have been determined by the old council prior to the April election.