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SPRINGFIELD

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FILE NO. S-1441

COUNTIES:

Change in Compensation of
County Board Members Elected
to Fill Unexpired Terms

Honorable John E. Payne
State's Attorney
Lee County
P. O. Box 462
Courthouse
Dixon, Illinois 61021

Dear Mr. Payne:

This responds to your request for an opinion as to the salary which should be paid to two members of your county board who were elected to fill unexpired two-year terms of resigned county board members.

You state that on November 7, 1978, at the regularly scheduled election, two county board members were elected to fill the unexpired balance of two years on a four-year term of two resigning county board members. Prior to November 7, 1978, the Lee County Board had increased the per diem payments

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to county board members. You have inquired as to whether the two board members elected to the unexpired terms are entitled to the per diem increase in their salary.

Section 9(b) of article VII of the Illinois Constitution of 1970 provides as follows:

"An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

Section 8 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1977, ch. 34, par. 838) provides in pertinent part:

"At the time it reapportions its county under this Act, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis or on an annual basis and shall fix the amount of that salary. If the county board desires to change the basis of payment or amount of compensation after fixing such items and before the next reapportionment, it may do so by ordinance or by resolution provided that such changes shall not take effect during the term for which an incumbent county board member has been elected. * * * "

Foreman v. People (1904), 209 Ill. 567, was a case in which a judge of the superior court was elected in 1899 and then resigned. Another person was elected at an election in November 1902, to fill the vacancy for the remainder of the term. The Illinois Supreme Court held that a law which went into effect July 1, 1901, increasing the salaries of the judges of the circuit and superior courts of Cook County, did not apply

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to the successor in office. The court held that the provision of the Illinois Constitution of 1870, prohibiting a change in compensation of the salaries of judges in Cook County during their continuance in office, refers to the term and not to the occupant. This decision has subsequently been cited with approval. (See, People v. Sweitzer (1917), 280 Ill. 436, 443; DeWolf v. Bowley (1934), 355 Ill. 530, 536.) It is also noted that my predecessor in opinion No. UP-630, issued April 17, 1962, concluded that the compensation of a person appointed to fill the unexpired term in the office of highway commissioner could not be increased before his appointment. Although these decisions were under the Constitution of 1870, there is no reason to interpret the Constitution of 1970 any differently.

Most of the courts in jurisdictions that have considered the question of altering the compensation of a person elected or appointed to fill an unexpired term have held that such compensation cannot be altered under a constitutional provision inhibiting change in such compensation during his term for which he shall have been elected. Thus, a constitutional inhibition against a change of compensation during the term for which they shall have been elected was held in Wilson v. Shaw (1922), 194 Iowa 28, 188 N.W. 940, to prevent one appointed and then elected to fill out an unexpired term of a

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judgeship, from taking a salary increase enacted during his predecessor's incumbency. In State ex rel. Henneford v. Yelle (1942), 12 Wash. 2d 434, 121 P. 2d 948, it was held that the Governor could not reduce the salary of a tax commissioner appointed to fill out an unexpired term, the Constitution forbidding change in the compensation of any public officer during his term of office being construed to refer to the term and not to the individual. See also, Clark v. Frohmiller (1939), 53 Ariz. 286, 88 P. 2d 542.

It is clear that section 9(b) of article VII of the Illinois Constitution of 1970, and section 8 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1977, ch. 34, par. 838), prevent an increase or decrease of the compensation of a county board member from taking effect during the term for which the officer was elected. I am of the opinion that this is the full four years. In other words, I am of the opinion that there can be no increase in the compensation of the two individuals who were elected to fill the unexpired terms of the resigning county board members.

Very truly yours,

A T T O R N E Y G E N E R A L