



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

June 23, 1972

FILE NO. S-486

COUNTIES:

**County Board Member -
Change in Compensation During Term**

**Honorable Robert S. Calkins
State's Attorney
Peoria County
Courthouse
Peoria, Illinois 61602**

Dear Mr. Calkins:

I have your recent letter wherein you state:

**"We request the opinion of your office on the
question stated below. The facts are as follows:**

**At the February, 1972 meeting of the Board of
Supervisors of Peoria County the following
Resolution was adopted which set the basis of
compensation for members of the County Board
effective as of March 1, 1972 as follows:**

That during the period from the 1st Monday in May, 1972 and through the ensuing four year term, all members of the County Board, excepting only the Chairman of said County Board, shall receive an annual compensation of \$3,600 per year which shall be full compensation for all duties performed as a member of the County Board, including regular, special or committee meetings, and any and other services as a County Board member, subject, however, to the following:

(a) That in addition to the above annual compensation, members of the County Board shall receive such travel and expense allowances as are determined by the County Board in accordance with the provisions of Ch. 53, Sec. 58.1 of the Revised Statutes of the State of Illinois.

At the May, 1972 meeting of the said Board of Supervisors of Peoria County the following Resolution was adopted which supplemented the foregoing compensation plan effective May 1, 1972 which provided as follows:

For each regularly scheduled meeting of the County Board, and for each regular or special meeting of a committee thereof to which the Board member is regularly or officially assigned, which the County Board member shall fail to attend for any reason shall cause the sum of THIRTY-SIX DOLLARS (\$36.00) to be deducted from the compensation to which the Board member would otherwise be entitled to receive, providing however, that the amount of such deduction in any one month for any one member shall not exceed the sum of THREE HUNDRED DOLLARS (\$300.00), regardless of the number of meetings the Board Member shall fail to attend during such month, and provided

further that any of the absences detailed above shall be excused if such absence is necessary because of attending to other County business as previously determined by Resolution or rule of prior written instruction of the Chairman of the Board.

Section 9(b) of Article VII of the 1970 Constitution of the State of Illinois states:

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.

Our question is: Does the foregoing 'penalty clause' which applies when a member of the County Board fails to attend a meeting which requires the deduction of \$36 in compensation for each meeting so missed, violate the foregoing Constitutional provision which prohibits a 'decrease in salary' during the officer's term of office?

Since it will be necessary to apply the deduction as of the current month in the instances where members fail to attend a meeting, we would appreciate it if you could advise us at your earliest convenience of your opinion on the above question."

The first question to be resolved is whether or not the resolution of the Peoria County Board at its May, 1972 meeting was a change in salary of the county board members. This supplemental resolution did keep the annual salary of a board member at the sum of \$3,600, however, it provided for

a deduction from the salary in any one month of the sum of \$36 if the board member failed to attend a meeting of the county board or a meeting of a committee thereof. Certainly no one would suggest that a board member should intentionally miss a meeting either of the county board or of a committee. The fact remains, however, that a board member could become ill or have some very good reason for failing to attend a meeting. To provide that a sum of money should be deducted from his salary would in effect be a decrease in his compensation. The board member campaigned and was elected on the assumption that his annual compensation would be \$3,600 per year. In my opinion it would be a decrease in his salary to provide for a \$36 deduction for failing to attend a meeting of the county board or a committee thereof.

The county board members commenced their terms on the first Monday of May (May 1), 1972. You have indicated that at the May, 1972 meeting of the county board, the supplemental resolution was enacted. The remaining question to be resolved is whether or not the change in salary which

was effected by the supplemental resolution was valid. In the case of Smith v. County of Bureau, 241 Ill. App. 117, the appellate court held that the compensation of an officer can be increased after the date of his election and prior to the beginning of the term of office. In Opinion No. UP-1258 which was issued by this office on September 9, 1964, it was held that a change of salary of a member of the county board of supervisors could not be effected during the term of the board member. Such a change in salary was held to be in violation of Section 38 of "An Act to revise the law in relation to counties," (Ill. Rev. Stats., 1963, ch. 34, par. 304) as well as a violation of section 10 of article X and section 11 of article IX of the 1870 Illinois Constitution. Since this opinion, as you know, a new constitution has been enacted in Illinois.

Section 9(b) of article VII of the 1970 Illinois Constitution contains a provision similar to those found in the 1870 Illinois Constitution. It 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."

A unit of local government is defined in section 1 of this article to include a county. I am of the opinion that the change in salary effected by the supplemental resolution of the county board, is contrary to the foregoing provision of section 9(b) of article VII of the 1970 Illinois Constitution.

Section 38 of "An Act to revise the law in relation to counties," (Ill. Rev. Stats., 1971, ch. 34, par. 304) provides as follows:

"The time of fixing the compensation of county officers, which compensation is to be fixed by the county board, shall be at the meeting of such board next before the regular election of the officers whose compensation is to be fixed; but in case where such compensation is not fixed, the board shall proceed, at the next regular or special meeting held thereafter, to fix such compensation."

The supplemental resolution changing the compensation of county officers is in direct conflict with the above statutory

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provision. Where there is a conflict between a statutory provision and a resolution of the county board, the resolution of the county board must give way to the statute. See Ruby Chevrolet v. Department of Revenue, 6 Ill. 2d 147, 151; Chicago Cosmetic Co. v. City of Chicago, 374 Ill. 384, 393.

In conclusion, I am of the opinion that the supplemental compensation plan which was enacted by the county board at its May, 1972 meeting was in the nature of a decrease in salary of an elected officer and, therefore, was in violation of section 9(b) of article VII of the 1970 Illinois Constitution, as well as a violation of Section 38 of "An Act to revise the law in relation to counties," Ill. Rev. Stats., 1971, ch. 34, par. 304.

Very truly yours,

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