



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215-2940
(614) 466-7090

May 20, 1994

Informal Opinion 1994-INF-0520

Arthur Hackett, Jr.
Mayor, City of Silverton

Dear Mr. Hackett:

In your letter to the Ethics Commission you ask whether the Ohio Ethics Laws and related statutes prohibit the City Clerk of the City of Silverton (City) from receiving an increase in her annual salary from \$4,500 to \$16,000. In response to your question, under the facts you present, you are not precluded by the Ethics Law from increasing the salary of the City Clerk.

In a series of formal advisory opinions construing the Ethics Law, the Ethics Commission has held that R.C. 102.03 (D) and (E) prohibit public officials and employees who serve on bodies which have the power to establish the compensation for members of that body from enacting or participating to enact an in-term increase in compensation for the officials or employees currently holding office and from receiving an increase enacted during their current term of office. These restrictions also apply to public officials and employees who otherwise have authority or influence over the establishment of the compensation for their respective positions. See Ohio Ethics Commission Advisory Ops. No. 91-007, 91-008, and 93-006. I have enclosed copies of these advisory opinions for your reference.

However, the Ethics Commission held, in Advisory Opinion No. 91-007, that a city clerk of a statutory city was not prohibited from receiving an in-term increase in compensation. The Commission explained:

The clerk's authority may be distinguished from that of the members of council in that the clerk of council does not set the compensation attendant to his position. R.C. 731.04 provides that council fixes the compensation of its clerk and other employees. The council may increase the clerk's compensation, just as any appointing authority may fix and increase the compensation of its employees. See generally Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31 (1980). The fact that the clerk is "elected" to his position by council, and serves for a fixed term does not alter the fact that the clerk does not have the authority to fix or increase his own compensation; such authority rests solely with his appointing authority, the city council.

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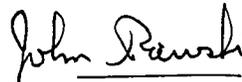
Therefore, the clerk's objectivity and independence of judgment could not be impaired by enactment of the ordinance providing the benefit to him during his term, and Section 102.03(E) would not prohibit the clerk from receiving the benefit during his term of office, even though he performs ministerial functions with respect to the ordinance enacting the benefit. See Advisory Opinion No. 90-004. See generally Advisory Opinion No. 75-006 (describing what constitutes a ministerial function).

In the instant situation, the City of Silverton is a governed by a charter. The City Charter provides that the City Clerk's salary shall be established by ordinance enacted by City Council. See City of Silverton City Charter § 5. Furthermore, a review of the section of the City Charter which defines the powers and duties of the City Clerk reveals that the City Clerk has no authority to fix or increase his own compensation. See City of Silverton City Charter § 3. Therefore, despite the fact that the City of Silverton is a governed by a charter, City Council may increase the City Clerk's compensation in the same manner as the city council of a statutory city, as described in Advisory Opinion No. 92-017 and R.C. 102.03 (D) and (E) do not prohibit the City Clerk from receiving an increase in her annual salary from \$4,500 to \$16,000.

This informal advisory opinion was approved by the Ethics Commission at its meeting on May 20, 1994. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.

Please call me if you have any questions, or wish to request a formal opinion from the Commission.

Sincerely,



John Rawski
Staff Attorney

Enclosures

Advisory Opinions No.:
91-007
91-008
93-006