



OHIO ETHICS COMMISSION
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Advisory Opinion Number 93-006
April 2, 1993

Syllabus by the Commission:

- (1) Division (D) of Section 102.03 of the Revised Code prohibits the members of village council from enacting an ordinance granting an in-term increase in compensation for the current members of council;
- (2) Division (E) of Section 102.03 of the Revised Code prohibits a village council member from accepting, for the duration of his present term, an increase in compensation enacted by council while he was a member thereof, regardless of whether he votes for or against the increase, or whether he abstains from participating in the issue;
- (3) Division (D) of Section 102.03 prohibits a village mayor from voting to break a tie of council in favor of enacting an ordinance to grant to the mayor an in-term increase in compensation, and from otherwise using his authority or influence, formally or informally, to secure an increase in compensation;
- (4) Division (E) of Section 102.03 of the Revised Code prohibits a village mayor from accepting, for the duration of his current term, an increase in compensation enacted by village council while he was mayor, regardless of whether he voted in favor of the increase in order to break a tie on council;
- (5) A village treasurer, clerk, or clerk-treasurer is not prohibited by Section 102.03 of the Revised Code from accepting an increase in compensation, enacted by the village council during his current term of office, unless a local provision authorizes the treasurer, clerk, or clerk-treasurer to exercise discretionary authority with respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for their respective positions;
- (6) A village solicitor is prohibited by Division (E) of Section 102.03 of the Revised Code from accepting, for the duration of the term of his agreement with the village, an increase in compensation enacted by village council during his current agreement and Division (D) of Section 102.03 of the Revised Code prohibits him from using his authority or influence to secure such an increase;
- (7) A member of a village board of trustees of public affairs is not prohibited, by Division (E) of Section 102.03 of the Revised Code, from accepting an increase in compensation enacted by village council during his term of office, unless a local provision authorizes the village board of trustees of public affairs to exercise discretionary authority with

respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for the position of member of the village board of trustees of public affairs;

(8) The clerk of a village board of public affairs is not prohibited, by Division (E) of Section 102.03 of the Revised Code, from accepting an increase in compensation authorized by the village legislative authority, unless a local provision authorizes the clerk of the village board of trustees of public affairs to exercise discretionary authority with respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for the position of clerk of the village board of trustees of public affairs.

* * * * *

You have asked whether the Ohio Ethics Law and related statutes prohibit elected officials of a statutory village, such as the council members, mayor, clerk, treasurer, clerk-treasurer, or trustees of the village board of public affairs organized under R.C. 735.28, from receiving increases in compensation during their terms of office. You have also asked if the village solicitor or the clerk of a village board of public affairs may receive an in-term increase in compensation. You have asked if an increase in health or life insurance benefits for village officials constitutes an in-term increase in compensation. Finally, you have asked if a municipal official may accept an increase of compensation at the beginning of a new term of office, if he acted on the increase during his prior term of office.

This opinion will examine in-term increases for the village officials and employees identified in your question in the following order: village council members; mayor; village treasurer; village clerk and clerk-treasurer; village solicitor; members of the village board of public affairs; and the clerk of the village board of public affairs.

Divisions (D) and (E) of Section 102.03 of the Revised Code state as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

An increase in compensation is within the definition of "anything of value" for purposes of R.C. 102.03 (D). See Ohio Ethics Commission Advisory Opinions No. 91-007 and 91-008. Life and health insurance benefits are "compensation," and, therefore, an increase in these benefits is an increase in compensation and is within the definition of "anything of value" for purposes of R.C. 102.03 (D) and (E). See *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389 (1976). But cf. R.C. 731.07 and 731.13 (the prohibition against increases or decreases in

compensation does not prohibit the payment by municipalities of increased costs in order to provide city and village officers with the identical benefits that were provided to the officers at the commencement of their terms); Advisory Opinion No. 92-016 (a city law director is not prohibited from receiving an in-term change in the form of his compensation, such as receiving an increase in salary in exchange for relinquishing his health insurance, so long as the amount of his compensation is not increased).

VILLAGE COUNCIL MEMBERS

In Advisory Opinion No. 91-007, the Ethics Commission held that an in-term increase in the compensation paid to city council members would provide a definite and particular financial benefit to the council members such that their objectivity and independence of judgment, in deciding whether the increase would be in the best interests of the city, could be impaired. The Commission concluded that R.C. 102.03(D) would prohibit the members of city council from enacting an ordinance granting an in-term increase in compensation for the current members of council for the duration of their present terms, and that R.C. 102.03(E) would prohibit current members of council from receiving an in-term increase in compensation for the duration of their present terms. The Commission stated:

Council is charged with the authority to fix the compensation of city officials through the enactment of ordinance. . . . An increase in the compensation paid to council members currently serving and acting on the increase would be of such character as to manifest a substantial and improper influence upon the council members with respect to their performance of this duty.

Advisory Opinion No. 91-007. The Commission further concluded that R.C. 102.03 (E) would prohibit a city council member from accepting an in-term increase in compensation for the duration of his term regardless of whether he voted to approve the increase in compensation. Id.

Village officials and employees are "public officials and employees" for purposes of R.C. 102.03, and therefore subject to the prohibitions of R.C. 102.03 (D) and (E). See R.C. 102.01(B) and (C). See also Advisory Opinion 92-013. A village council, like a city council, is charged with the authority to fix the compensation of municipal officers and employees. See R.C. 731.13. The analysis and conclusions set forth in Advisory Opinion No. 91-007 and summarized above would, therefore, apply to village council members. Division (D) of Section 102.03 would prohibit the members of a village council from enacting an ordinance granting an in-term increase in compensation, including an increase in salary or an increase in life or health insurance benefits, for the current members of council, since the in-term increase could impair the objectivity and independence of judgment of the council members. Advisory Opinion No. 91-007. Division (E) of Section 102.03 would prohibit a member of a village council from accepting, for the duration of his present term, an increase in compensation enacted by village council while he was a member thereof, regardless of whether he voted to enact the increase. Id.

VILLAGE MAYOR

You have asked whether a village mayor may accept an in-term increase in his compensation.

In Advisory Opinion No. 91-008, the Ethics Commission determined that an increase in the compensation paid to a city mayor in his current term would render such a definite financial benefit to the mayor's personal interests that the financial benefit could impair the mayor's objectivity and independence of judgment, as a public official, in deciding whether the increase would be in the best interests of the city. The Commission examined the duties of the city mayor to determine if the mayor had any role in the drafting, consideration, or adoption of city ordinances, including an ordinance enacting an in-term increase in compensation. The Commission noted that a city mayor is elected to an executive branch office of the city government, and is empowered generally to make written recommendations for the welfare of the city to the legislative authority as "seem wise to him." R.C. 733.06. See also R.C. 733.01, 733.02, 733.03, 733.21, and 733.22. The Commission also stated that a city mayor's veto power, the authority to approve, disapprove, or not act on any ordinance or resolution passed by the city council (R.C. 731.27), demonstrated that a city mayor has legally significant authority over the enactment of city ordinances, regardless of whether he approves the ordinance, disapproves the ordinance, or fails to return the ordinance to council. Advisory Opinion No. 91-008. As a result, the Commission determined that R.C. 102.03 (D) would prohibit the mayor from approving the enactment of an ordinance granting him an in-term increase in compensation and from otherwise using his authority or influence, formally or informally, to secure an increase. The Commission further concluded that, because of the mayor's duties as described in R.C. 731.27, R.C. 102.03 (E) would prohibit the mayor from accepting an in-term increase in compensation, regardless of whether he approved the ordinance, disapproved the ordinance, or failed to return the ordinance to council.

A village mayor is, like a city mayor, an elected officer of the executive branch of the municipal corporation. R.C. 733.24. However, the village mayor does not have the same veto power that is afforded to a city mayor. See R.C. 731.27.

A village mayor's duties regarding municipal ordinances can be distinguished from the authority of a city mayor. For example, the village mayor is specifically required to perform the duties prescribed by the bylaws and ordinances of the municipal corporation, and to see that all ordinances, bylaws, and resolutions of the legislative authority are faithfully obeyed and enforced. R.C. 733.30. Unlike a city mayor, a village mayor is also the president of the legislative authority and he presides at all regular and special meetings of the authority. R.C. 733.24. The village mayor has no vote as a member of the legislative authority except in the case of a tie. Id.

These last two duties of the village mayor are more closely comparable to the authority of the president of a city council, than the authority of a city mayor. See R.C. 733.09 (a city council president presides over council meetings, and has no vote as a member of council except in the case of a tie). In Advisory Opinion No. 91-007, the Ethics Commission examined that duties of a

president of city council to determine whether the president of city council was prohibited from receiving an in-term increase in compensation. The Commission concluded that:

[A]lthough the president of council is not a member of council, he does exercise responsibilities in the enactment of ordinances that cannot be described as merely ministerial or clerical. He presides at all meetings of council, and has the power to vote on the enactment of an ordinance in case of a tie. Therefore, the president has the opportunity to directly exercise authority and exert influence in the enactment of an ordinance granting an increase in benefits.

Advisory Opinion No. 91-007. The Commission concluded that R.C. 102.03 (D) prohibits the president of council from voting to break a tie in favor of granting to the president an in-term increase in compensation, and from otherwise using his authority or influence, formally or informally, to secure an increase, and that Division (E) would prohibit the president from accepting an in-term increase in compensation enacted by council, regardless of whether the president voted in favor of the increase in order to break a tie on council. Id.

As stated above, the village mayor, like a city council president, has specific duties with regard to the enactment of the ordinances of his municipality. Therefore, the conclusions set forth in Advisory Opinion No. 91-007, regarding the president of city council, would also apply to village mayors. Division (D) of Section 102.03 would prohibit a village mayor from casting a tie-breaking vote or performing any other duties relative to a village ordinance enacting an in-term increase in salary or an in-term increase in benefits for his position, or otherwise using his position in any way to secure an in-term increase in compensation. Advisory Opinion No. 91-007. Division (E) of Section 102.03 would prohibit a village mayor from accepting, for the duration of his present term, an increase in compensation enacted by village council regardless of whether he cast a tie-breaking vote or otherwise participated in the passage of the village ordinance. Id.

VILLAGE TREASURER

The next question you have asked is whether the village treasurer may accept an in-term increase in compensation. R.C. 733.42 provides for the election of a city or village treasurer. In Advisory Opinion No. 91-007, the Commission considered whether a city treasurer was prohibited from receiving an in-term increase in compensation. The Commission determined that a city treasurer exercises no discretionary, decision-making authority under the law with regard to the enactment of ordinances or the appropriation of moneys for the purpose of funding increases in compensation. The city treasurer has numerous duties and authority with regard to the investment, disbursement, and accounting for the city's monies. R.C. 733.43, 733.44, 733.45, and 733.46. However, the city treasurer has no authority regarding whether an ordinance authorizing the expenditure of money, such as an increase in compensation, shall be enacted. Further, the city treasurer has no authority to fix or increase his own compensation. Therefore, the Commission concluded, in Advisory Opinion No. 91-007, that R.C. 102.03 (E) would not prohibit a city treasurer from receiving an increase in salary or benefits during his current term of office, unless local provisions grant the city treasurer discretionary authority with respect to the enactment of legislation, the appropriation of city funds, or the setting of the treasurer's

compensation. The Commission further concluded that R.C. 102.03 (D) would prohibit the city treasurer from misusing his position or influence, formally or informally, to secure an in-term increase in compensation.

The duties and authority of a village treasurer are identical to the duties and authority of a city treasurer. The conclusions and analysis of Advisory Opinion No. 91-007, with regard to a city treasurer, thus apply to a village treasurer. The Commission concluded in Advisory Opinion No. 91-007 that an in-term increase in compensation would not impair the city treasurer's objectivity and independence of judgment with respect to his duties. Accordingly, R.C. 102.03 (E) does not prohibit a village treasurer from accepting an in-term increase in compensation, whether in the form of an increase in salary or an increase in benefits, unless village provisions give the treasurer discretionary authority with regard to the consideration or passage of ordinances, the appropriation of village funds, or setting the salary for the treasurer's office. R.C. 102.03 (D) does prohibit a village treasurer from misusing his position to secure an increase in his compensation.

VILLAGE CLERK AND CLERK-TREASURER

You have asked whether a village clerk or clerk-treasurer may accept an in-term increase in compensation, either in the form of an increase in salary or an increase in benefits. A village clerk is an elected member of the executive branch of village government. R.C. 733.23 and 733.26. The clerk is responsible for keeping all books of the village, which reflect the money received and expended by the village, the property owned by the village and the income derived from village property, and all village taxes and assessments. R.C. 733.28. The seal of the village clerk is affixed to all village papers requiring authentication. R.C. 733.29. The clerk annually audits the accounts of all officers and departments of the village. R.C. 733.12. The clerk prescribes the form of accounts and reports of other village departments, and the method of keeping accounts, and can inspect and revise the accounts and reports of other departments. Id. The village clerk is charged with the responsibility to prevent the amount set aside for appropriations from being overdrawn, and for assuring that payments from the village treasury are made from the correct fund. R.C. 733.13. When a claim is presented to the village clerk, he may require proof of the validity of the claim. Id. The village clerk receives statements of the receipts and expenditures of village officers and departments, countersigns receipts given by the treasurer, and certifies to the court of common pleas the election of certain municipal officers. R.C. 733.14-.15. These fiscal duties of the village clerk are parallel to the duties performed by the city auditor.

The village clerk is also the clerk of the village council. As such, the clerk performs, at the village level, the same duties performed by the clerk of the city council at the city level. For example, R.C. 731.20 provides that, "ordinances, resolutions, and bylaws shall be authenticated by the signature of the presiding officer and clerk of the legislative authority of the municipal corporation." The clerk also performs duties pertaining to the recording and publication of enacted ordinances. See, e.g., R.C. 731.20 (the clerk shall record bylaws, resolutions, or ordinances in a book furnished by the legislative authority for that purpose) and 733.27 (the village clerk shall keep a record of all proceedings of the village legislative authority, and of all rules, bylaws, resolutions, and ordinances passed or adopted by the village legislative authority);

R.C. 731.21 (C) (clerk shall supply copies of text of ordinances to any person upon request and must post a copy of the text); R.C. 731.23 (clerk and mayor certify as correct the revision, codification, and rearrangement of ordinances published in book form); R.C. 731.24 (clerk's certification as to legal publication of ordinances or summary of ordinances); R.C. 731.25 (clerk's certification as to publication by posting of ordinances or summary of ordinances). These functions are ministerial or clerical in nature.

As stated above, the village clerk exercises the same duties as a city auditor and as a city clerk of council. In Advisory Opinion No. 91-008, the Ethics Commission was asked if a city auditor was prohibited from receiving an in-term increase in compensation. The Commission concluded that, although the city auditor has discretionary duties regarding the city's funds, the auditor exercises no duties relative to the introduction or enactment of ordinances, does not have a role in the appropriation of city funds for the purpose of funding increases in compensation, and does not have the authority to fix his own salary. The Commission concluded that R.C. 102.03 (E) does not prohibit a city auditor from receiving an increase in compensation during his term of office. In Advisory Opinion No. 91-007, the Commission was asked whether a city clerk of council was prohibited from receiving an in-term increase in compensation. As with the city auditor, the Commission concluded that a city clerk of council exercises no discretionary duties relative to the introduction or enactment of ordinances, does not have a role in the appropriation of city funds for the purpose of funding increases in compensation, and does not have the authority to fix his own salary. Therefore, the Commission concluded that R.C. 102.03 (E) does not prohibit a city clerk of council from receiving an increase in his compensation during his present term of office. However, Advisory Opinions No. 91-007 and 91-008 held that R.C. 102.03 (D) would prohibit the city auditor and city clerk of council from misusing their respective positions to secure an in-term increase in compensation.

Applying these conclusions to the situation of the village clerk, it is clear that the clerk exercises discretion in the fiscal matters of the village, functions as a check upon the expenditure of village funds, and keeps the records of all ordinances of the village. However, the village clerk does not play a discretionary role in the introduction or enactment of ordinances, even though he does have record-keeping authority and other ministerial duties relative to village ordinances. See generally Advisory Opinion No. 91-007. Also, the village clerk does not have the authority to fix or increase his own compensation, and does not have the authority to make appropriations of moneys for the purpose of funding increases in compensation. Therefore, an in-term increase in compensation is not of such character as to manifest a substantial and improper influence upon the village clerk in the performance of his duties. See generally Advisory Opinions No. 91-007 and 91-008. Accordingly, R.C. 102.03 (E) would not prohibit a village clerk from receiving an increase in compensation enacted by ordinance during his current term of office, unless local village provisions authorize the clerk to exercise discretionary authority over the enactment of ordinances, the appropriation of moneys, or the establishment of the clerk's compensation. See Advisory Opinions No. 91-007 and 91-008 (regarding clerks of city council and city auditors). Division (D) of Section 102.03 would prohibit the clerk from misusing his position or influence, formally or informally, to secure an in-term increase in compensation. Id.

The legislative authority of a village has the authority to combine the duties of the village clerk with the duties of the village treasurer, creating an officer called the village clerk-treasurer.

R.C. 733.261 (A). The village clerk-treasurer must perform all of the duties provided by law to the clerk and the treasurer. R.C. 733.261 (C). The legislative authority shall set the compensation of the village clerk-treasurer. Id.

This opinion has earlier discussed the powers and duties of both the village clerk and the village treasurer. Neither officer has discretionary authority with regard to the passage, consideration, or enactment of village ordinances, the appropriation of village funds, or the establishment of their own salaries, and neither officer is prohibited from receiving an in-term increase, so long as he does not misuse his position to secure the increase.

A village clerk-treasurer performs the duties of both the village clerk and the village treasurer, and has no additional duties. R.C. 733.261. The combined office of clerk-treasurer does not exercise authority with respect to introducing, considering, or enacting village ordinances, appropriating village funds, or setting the salary for the office of clerk-treasurer. Therefore, an in-term increase in compensation is not of such character as to improperly influence the clerk-treasurer in the performance of his duties. Accordingly, R.C. 102.03 (E) does not prohibit a village clerk-treasurer, who performs the duties of both the village clerk and the village treasurer, from accepting an in-term increase in his compensation, whether the increase takes the form of an increase in salary or an increase in life or health insurance benefits, unless a local village provision gives the clerk-treasurer discretionary authority over the enactment of ordinances, the appropriation of moneys, or the setting of the clerk-treasurer's compensation. However, R.C. 102.03 (D) prohibits a village clerk-treasurer from misusing his position to secure an in-term increase in compensation.

VILLAGE SOLICITOR

You have asked whether a village solicitor may receive an in-term increase in compensation. In Advisory Opinion No. 91-008, the Ethics Commission determined that a city law director was prohibited, by R.C. 102.03 (E), from receiving an in-term increase in his compensation. The Commission examined the city law director's duties, and determined that a law director is an elected officer of the city, acts as the legal advisor for the city and its officers, and has numerous duties regarding the preparation, enactment, and enforcement of city ordinances. Advisory Opinion No. 91-008. The Commission stated:

Although the law director does not participate directly to enact an ordinance, as council members . . . and the mayor do, it is apparent that the law director plays a significant and authoritative role in the introduction, adoption, interpretation, and enforcement of council's enactments, and that an increase in the law director's salary could impair his objectivity and independence of judgment in performing his responsibilities as law director with respect to an ordinance increasing his compensation. Therefore, R.C. 102.03(E) would prohibit the law director from accepting, for the duration of his term, an increase in compensation enacted by city council during his current term of office.

R.C. 102.03(D) also prohibits a city law director from using the authority or influence of his position to secure an in-term increase in compensation. Advisory Opinion No. 91-008.

The office of village solicitor is somewhat different from the office of city law director. R.C. 733.48 provides:

When it deems it necessary, the legislative authority of a village may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel.

A solicitor of a statutory village is not an elected officer of the village, but is a contractual official or employee of the village. Ohio Ops. Att'y Gen. No. 89-007 and 69-039. In fact, the village council is not specifically required to engage legal counsel for the village. Although the village solicitor's duties are not specifically set in the Revised Code, the village solicitor is the "legal counsel for the village, or for any department or official" of the village and provides general legal advice to the village and its officers. R.C. 733.48. Additionally, the village solicitor is required to perform such other duties as are required by the village legislative authority. It is reasonable to assume that the duties of the village solicitor are similar to those of a city law director, and that the village solicitor would be asked to prepare village ordinances and provide his opinions about the legality and form of ordinances. See generally Advisory Opinion No. 91-008. As in the situation with a city law director, although the village solicitor does not participate directly in the enactment of village ordinances, he may exercise significant discretionary authority with regard to village ordinances. See Advisory Opinion No. 91-008.

A village solicitor does serve in his position for a specific period, or term. See R.C. 733.48. The term of service for a village solicitor is not set by statute, but is set by the village legislative authority. Id. The village council may set the term for the village solicitor to be as long or as brief as it chooses, except that the term may not exceed two years. Id. An increase in the village solicitor's compensation, during the term of office set by the village council, would be of such a character as to impair the solicitor's objectivity with regard to the performance of his duties with respect to an ordinance increasing his compensation. A village solicitor is prohibited from performing any of his official duties with regard to a village ordinance that increases his own compensation in his current term. A village solicitor is further prohibited, by R.C. 102.03 (E), from accepting, for the length of his agreement with the village legislative authority, an increase in the amount of his compensation. This is true regardless of whether the increase in compensation takes the form of an increase in his salary or an increase in his health or life insurance benefits. The Ethics Law and related statutes do not, however, prohibit a village solicitor, and the village legislative authority, from negotiating any compensation terms they deem appropriate, and are otherwise lawful, before the beginning of the solicitor's term for which the compensation will be effective.

MEMBERS OF THE VILLAGE BOARD OF PUBLIC AFFAIRS

Every village that has or plans to construct, lease, or purchase a water works, electric light plant, artificial or natural gas plant, or similar public utility, or that plans to establish a schedule of rates or charges for the use of the village sewage or disposal works, must establish a three-member board of trustees of village affairs. R.C. 733.28. The board members serve four-year elected terms on the board. Id.

The board is charged with the responsibility of managing, conducting, and controlling the waterworks, electric light plants, artificial and natural gas plants, or other similar utilities, furnishing supplies of water, electricity, and gas, and collecting all water, electric, or gas rents and charges. In order to perform these duties, the board may appoint necessary officer, employees, and agents. R.C. 735.29. The board may make laws and rules relative to the safe, efficient, and economical management and protection of the village's utilities. These laws and rules, when not in conflict with the ordinances of the village, have the same validity as ordinances. The board has the same powers as those extended to a city director of public service relative to utilities (R.C. 735.05-.09), and those extended to municipal legislative authorities relative to waterworks (R.C. 743.01, 743.05-.07, 743.10-.11, 743.18 and 743.24). See R.C. 735.29.

The compensation paid to members of the board of trustees of public affairs is not specifically mentioned in the statutes that empower the board. However, as stated above, the village council has the authority to set the salaries for all "officers, clerks, and employees of the village except as otherwise provided by law." R.C. 731.13. The village board of trustees of public affairs has no statutory authority to set the salary for members of the board of trustees. Although the laws and rules of the board of public affairs may have the same validity as ordinances, the trustees of the board of public affairs have no duties relative to the drafting, passage, or enactment of actual village ordinances, including ordinances enacting increases in compensation. Finally, members of the board of trustees of public affairs have no authority regarding the appropriation of village funds. Therefore, the objectivity and independence of judgment of the members of the board of trustees of public affairs will not be impaired if they receive in-term increases in their compensation. Accordingly, the members of a village board of trustees of public affairs are not prohibited, by R.C. 102.03 (E), from receiving an increase in their compensation during their terms of office, unless a local village provision gives the board of trustees of public affairs discretionary authority over the enactment of ordinances, the appropriation of moneys, or the setting of the members' compensation. See generally Advisory Opinions No. 91-007 and 91-008. Further, R.C. 102.03 (D) prohibits a member of a board of trustees of public affairs from misusing his position to secure an in-term increase in compensation.

CLERK OF THE BOARD OF TRUSTEES OF PUBLIC AFFAIRS

Your next question is whether the clerk of a village board of trustees of public affairs is prohibited from accepting an in-term increase in compensation. A village board of trustees of public affairs has the authority to "elect a clerk, who shall be known as the clerk of the board of trustees of public affairs." R.C. 735.28. But see R.C. 733.28 (the village council may merge the duties of the village clerk and clerk of the board of trustees of public affairs, thereby allowing the village clerk to perform the additional duties and receive additional compensation therefor).

The position of the clerk of the village board of trustees of public affairs is somewhat similar to the position of the city clerk of council. A city clerk of council is elected by the council (R.C. 731.04), and generally performs ministerial duties. See 1962 Ohio Op. Att'y Gen. No. 2746 (although clerk is apparently an officer, his functions are purely clerical and ministerial). The Ethics Commission concluded in Advisory Opinion No. 91-007 that, because the clerk of council

has no discretionary duties relative to the passage of city ordinances, appropriation of city funds, or establishing the salary for his position, the objectivity and independence of judgment of a city clerk of council would not be impaired if the clerk received an increase in compensation during his term of office. Therefore, R.C. 102.03 (E) does not prohibit a city clerk of council from receiving an increase in his compensation during his present term of office. Id.

The clerk of the board of trustees of public affairs similarly has no authority with respect to the enactment of legislation or the appropriation of funds. R.C. 735.28 and .29. He has no authority to set or increase his own compensation. Id. Therefore, an in-term increase in his compensation would not have a substantial and improper influence upon him with respect to his duties. The clerk of the board of trustees of public affairs is not prohibited by Section 102.03 (E) of the Revised Code from accepting an increase in compensation, unless a local provision authorizes the clerk to exercise discretionary authority with respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for the position of clerk.

Division (D) of Section 102.03 would prohibit the clerk of the board of trustees of public affairs from misusing his position or influence, formally or informally, to secure an increase in compensation.

Your final question is whether municipal council members are prohibited, by R.C. 102.03 (D) and (E), from receiving an increase in compensation at the beginning of a new term if they were members of the council in the preceding term, and the council members voted during the preceding term on the increase, either prior to, or after, their re-election. There is nothing within the Ethics Law that would prohibit a municipal council member, or any other official, from receiving an increase in compensation at the beginning of his new term of office, so long as the increase is acted upon before the council member is re-elected to his council position. An individual who has been elected or re-elected to public office is legally assured of assuming that office, and receiving the attendant compensation, at the beginning of his term of office, absent an election contest. The purpose of requiring a village officer to forgo any increase in compensation enacted during his term is to assure that the objectivity and independent judgment of the officers who are making the decision to increase the compensation are unaffected by the fact that they would be entitled to the increase. This protection is lost if incumbents who are re-elected are entitled to an increase in compensation that is enacted after their re-election but prior to the beginning of their new term of office. See also R.C. 731.13 (a village council shall fix the compensation of elected officers, for the "ensuing term of office at a meeting held not later than five days prior to the last day fixed by law for filing as a candidate for such office"). However, there is nothing in the Ethics Law and related statutes that prohibits a village official from receiving an increase in compensation at the commencement of a new term if he voted for the increase during his previous term prior to his re-election.

This opinion does not address or purport to interpret R.C. 731.13, which prohibits the salary of any officer of a village from being increased or decreased during his term of office, or any other local provisions governing in-term increases for village officials or employees. Also, the issues presented and addressed in this opinion relate to officials of statutory villages. The reasoning underlying the opinion's conclusions and interpretation of the Ethics Law would also

generally apply to charter villages. However, the power of municipal officials and the method by which the compensation of municipal officers is set vary greatly among charter municipalities, and the Ethics Commission should be contacted if questions arise concerning application of this opinion to the officials of a particular municipality.

This advisory opinion is based on the facts presented, and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ethics Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Revised Code prohibits the members of village council from enacting an ordinance granting an in-term increase in compensation for the current members of council; (2) Division (E) of Section 102.03 of the Revised Code prohibits a village council member from accepting, for the duration of his present term, an increase in compensation enacted by council while he was a member thereof, regardless of whether he votes for or against the increase, or whether he abstains from participating in the issue; (3) Division (D) of Section 102.03 prohibits a village mayor from voting to break a tie of council in favor of enacting an ordinance to grant to the mayor an in-term increase in compensation, and from otherwise using his authority or influence, formally or informally, to secure an increase in compensation; (4) Division (E) of Section 102.03 of the Revised Code prohibits a village mayor from accepting, for the duration of his current term, an increase in compensation enacted by village council while he was mayor, regardless of whether he voted in favor of the increase in order to break a tie on council; (5) A village treasurer, clerk, or clerk-treasurer is not prohibited by Section 102.03 of the Revised Code from accepting an increase in compensation, enacted by the village council during his current term of office, unless a local provision authorizes the treasurer, clerk, or clerk-treasurer to exercise discretionary authority with respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for their respective positions; (6) A village solicitor is prohibited by Division (E) of Section 102.03 of the Revised Code from accepting, for the duration of the term of his agreement with the village, an increase in compensation enacted by village council during his current agreement and Division (D) of Section 102.03 of the Revised Code prohibits him from using his authority or influence to secure such an increase; (7) A member of a village board of trustees of public affairs is not prohibited, by Division (E) of Section 102.03 of the Revised Code, from accepting an increase in compensation enacted by village council during his term of office, unless a local provision authorizes the village board of trustees of public affairs to exercise discretionary authority with respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for the position of member of the village board of trustees of public affairs; and (8) The clerk of a village board of public affairs is not prohibited, by Division (E) of Section 102.03 of the Revised Code, from accepting an increase in compensation authorized by the village legislative authority, unless a local provision authorizes the clerk of the village board of trustees of public affairs to exercise discretionary authority with respect to the enactment of legislation, the appropriation of village funds, or the establishment of the compensation for the position of clerk of the village board of trustees of public affairs.


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