



STATE OF INDIANA  
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**OFFICIAL OPINION 2004-9**

The Honorable Joseph W. Harrison  
Majority Floor Leader  
P.O. Box 409  
Attica, IN 47918-0409

RE: Compensation for Elected City Officer

Dear Senator Harrison:

This letter is in response to your recent request for an advisory opinion on the following question:

Subsequent to a local clerk treasurer resigning his position and an appointment to that vacancy, may the salary for the position be reduced by the council at the request of the mayor under Indiana Code section 36-4-7-2?

**BRIEF ANSWER**

The salary may not be reduced. It is clear from legislative amendments that the legislature intended to clarify the statutory language at Indiana Code section 36-4-7-2 in order to prohibit such a reduction in compensation. By amendment, the legislature added statutory language to prohibit reducing compensation from a set amount. *See* Pub. L. No. 15-1933, § 3; Acts 1980, Pub. L. No. 212; Acts 1981, Pub. L. No. 17, §21. The compensation of a city officer may not be reduced or increased in the year fixed, nor may it be reduced to less than the salary of the *prior* year, regardless of the timing. Ind. Code § 36-4-7-2(c).

**ANALYSIS**

Indiana Code section 36-4-7-2 provides guidelines for when the salary of an elected official may be changed, and the parameters for those changes:

- (a) As used in this section, "compensation" means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money is paid.
- (b) The city legislative body shall, by ordinance, fix the annual compensation of all elected city officers. The ordinance must be published under IC 5-3-1, with the first publication at least thirty (30) days before final passage by the legislative body.
- (c) The compensation of an elected city officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

This Code section has been amended several times, with the most significant, relevant changes taking place in the 1981 amendment. The changes to the statute indicate an intention by the legislature to add clarification to statutory language concerning compensation. The legislature added "nor may it be reduced below the amount fixed for the year 1980." Acts 1980, Pub. L. No. 212; Acts 1981, Pub. L. No. 17, §21. An additional amendment in 1993 changed "year 1980" salary language to "the previous year," thus changing the salary floor to change during each successive year. Ind. Pub. L. No. 15-1933, § 3. That portion of the statute cannot be read as being redundant. The clause now reads in its entirety, "[t]he compensation of an elected city officer may not be changed in the year for which it is fixed, *nor may it be reduced below the amount fixed for the previous year.*" Ind. Code § 36-4-7-2(c) (emphasis added). Therefore, the compensation cannot be reduced or increased in the year fixed, and cannot be reduced to less than the salary of the *prior* year, regardless of the timing.

The rules of statutory construction, outlined in Indiana Supreme Court cases, support this interpretation. "[I]t is presumed that the General Assembly did not intend to enact a superfluous statutory provision, and therefore, the Court, when interpreting a statute, will endeavor to give meaning to every word in that statute." *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 633 (Ind. Tax 1999) (citations omitted).

The 1981 amended version included two significant changes. First, the compensation of an elected official was amended from remaining unchanged "during his term of office" to "in the year for which it is fixed." Acts 1980, Pub. L. No. 212; Acts 1981, Pub. L. No. 17, §21. In addition to that change, the phrase "nor may it be reduced below the amount fixed for the previous year" was added, being offset from the first clause by a comma. Acts 1981, Pub. L. No. 17, §21. This offset and the fact the clause was added, demonstrates an intent by the legislature for this clause to have a distinct importance. When "the Court must read a statute to give effect to every word [and] [t]he Court will avoid an interpretation that renders any part of the statute meaningless or superfluous," the interpretation above is the only possible interpretation. *Enterprise Leasing Co. of Chicago v. Ind. Dept. of State Revenue*, 779 N.E.2d 1284, 1294 (Ind. 2002) (citations omitted). The addition of the second clause was made with the intent to keep the salary from ever dropping below a set amount. "The Court will strive to give words and phrases in a statute their plain, ordinary and usual meaning." *Id.* Any strange or extraordinary interpretation of this statute will thus not be read, as the plain and usual meaning is clear. "[T]he introduction of a new word or words into a statute indicates an intent to cure a defect in and suppress an evil not covered by the former law. It will be presumed in such a case that the

Legislature intended to change or add to the existing law." *Sherfey v. City of Brazil*, 13 N.E.2d 568, 570 (Ind. 1938) (citations omitted).

CONCLUSION

In reviewing the statutory language of Indiana Code section 36-4-7-2, in light of its history of legislative amendments, it is my opinion that the salary of the local clerk treasurer may not be reduced. The compensation of a city officer may not be reduced or increased in the year fixed, nor may it ever be reduced to less than the salary of the prior year, regardless of the timing.

Sincerely,



Stephen Carter  
Attorney General

Gregory F. Zoeller  
Deputy Attorney General