

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CHARTER TOWNSHIP ACT: Circumstances under which a charter township official's salary may be reduced

CHARTER TOWNSHIPS:

LOCAL OFFICIALS COMPENSATION COMMISSION:

PUBLIC OFFICERS AND EMPLOYEES:

In accordance with the mandates set forth in section 6a of the Charter Township Act, MCL 42.6a, an elected official of a charter township may not consent to a reduction in his or her salary during the official's term of office unless the consent is in writing and there is a corresponding reduction in the officer's responsibilities and requirements.

If an elected township official's salary has been improperly reduced, the township should pay the unpaid portion minus the applicable payroll deductions. The official may then voluntarily return to the township all or a portion of any compensation received.

Opinion No. 7238

December 1, 2009

Honorable Bruce Patterson  
State Senator  
The Capitol  
Lansing, MI 48933

You have asked whether elected officials in a charter township may lawfully consent to a reduction in a salary that has been established under section 6a of the Charter Township Act, MCL 42.6a. You further ask how to remedy a circumstance where a reduction in salary has been implemented by mere consent of an elected official.<sup>1</sup>

---

<sup>1</sup> You have also asked whether the charter township's compensation commission ordinance has been violated by a voluntary reduction in salary. Historically, this office has not issued opinions regarding compliance with and enforcement of local ordinances. Therefore, this opinion will not address that portion of your request.

According to information provided with your request, the township created a local officials compensation commission (Commission) by ordinance.<sup>2</sup> The Commission passed a resolution establishing the compensation for elected officials as provided in MCL 42.6a(1)(b). In the exercise of its statutory disapproval authority, the township board failed to adopt a resolution rejecting the salaries established by the Commission. Yet, over the next two months, the township supervisor, the township treasurer, and three township trustees submitted written requests to have their salaries reduced for 2009.

The common law rule is that a public official's acceptance of compensation less than the prescribed amount is void as against public policy. The official retains the right to recover the unpaid portion of his or her salary.<sup>3</sup> 4 McQuillin, *Municipal Corporations* (3d ed, 1992 rev), § 12.191, pp 83-84 explains the legal principle:

At common law, acceptance by a public officer of an amount less than his or her salary does not represent a waiver, estoppel or accord and satisfaction. Accordingly, the courts have frequently held that an agreement by an officer to accept a less sum than the prescribed salary of an office is void, as against public policy, and the officer is not precluded from recovering, in an appropriate action brought for that purpose, the full amount of compensation due.

Citing a long line of Michigan cases, the Supreme Court in *Brown v Dep't of Military Affairs*, 386 Mich 194, 200-201; 191 NW2d 347 (1971), cert den 405 US 990; 92 S Ct 1256; 31 L Ed 2d 457 (1972), held that a public officer's waiver of salary established by law, rather than by contract, is void:

---

<sup>2</sup> Under section 6a(1), the township may follow the ordinance procedure "[i]n place of the procedure in section 6 [MCL 42.6]." MCL 42.6a(1). This opinion does not address the circumstance where a township follows the procedure in section 6.

<sup>3</sup> Of course, the official's claim may be subject to defenses, such as the running of the statute of limitations. *Brown*, 386 Mich 194, 201-202; 191 NW2d 347 (1971), cert den 405 US 990; 92 S Ct 1256; 31 L Ed 2d 457 (1972).

Salaries of public officers which are established by law are not determined by contract or agreement between the parties. The public employer cannot pay more than the law allows. The public employee cannot accept less.

This common law principle was followed in OAG, 1997-1998, No 6961, pp 85, 86 (November 5, 1997), where the Attorney General concluded that a planning commission member could not refuse compensation but could return the compensation to the township, subject to applicable tax consequences:

While a township planning commission member may not refuse to accept compensation provided by the township board, such compensation may subsequently be returned to the township. If a planning commission member, however, elects to return compensation earned for public service, he or she should consider the tax consequences of such action.

The method for establishing compensation for elected officials in a charter township is provided in the Charter Township Act (Act), 1947 PA 359, MCL 42.1 *et seq.* Section 6a provides for the creation of a local officials compensation commission, which must meet in each odd-numbered year. MCL 42.6a(1)(a) and (c). Subject to rejection by a two-thirds vote of the township board, the Commission shall determine salaries for elected township officials to take effect 30 days after the filing of its determination:

The commission *shall* determine the salary of each township elected official which determination *shall be the salary* unless the township board by resolution adopted by 2/3 of the members elected to and serving on the board rejects the determination. A determination of the commission shall be effective 30 days following its filing with the township clerk unless rejected by the township board. If a determination is rejected, the existing salary *shall prevail*. [MCL 42.6a(1)(b); emphasis added.]

The use of the word "shall" makes a statutory provision mandatory. *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982). Therefore, absent a statutory exception, the salary for an elected official in a charter township, determined by that section

6a(1)(b) process, *shall be the salary* of that official. The elected official has no authority to reduce that salary.

However, under specified circumstances, section 6a(6) of the Act authorizes a township to institute a decrease in an elected official's salary for the current term of office:

The salary of an elected township official shall not be decreased during the official's term of office as long as the responsibilities and requirements of that office are not diminished during the term of the official's term of office, *and* the salary of an elected township official shall not be decreased during the official's term of office unless the official consents in writing to the reduction in salary. Notwithstanding the above, if a township in setting a township supervisor's salary has designated a portion of the supervisor's salary to be paid the supervisor for directly performing the property tax assessing function within the township and the supervisor subsequently fails to perform that function, the salary of the supervisor may be reduced by that portion of the supervisor's salary designated for the direct performance of the property tax assessment function; provided that in no event may that portion of a supervisor's salary designated for nonassessment functions be decreased during the supervisor's term of office without the supervisor's written consent. [MCL 42.6a(6); emphasis added.]<sup>4</sup>

Thus, the circumstances under which a salary reduction may occur include those where the responsibilities and requirements of the office are diminished *and* the official consents in writing to the reduction in salary. In *Michigan Public Service Co v Cheboygan*, 324 Mich 309, 341; 37 NW2d 116 (1949), the Court explained that: "'And' is a conjunctive, used to denote a joinder, a union." *Karaczewski v Farbman Stein & Co*, 478 Mich 28, 732 NW2d 56 (2007) stated: "Plainly, the use of the conjunctive term 'and' reflects that *both* requirements must be met."

---

<sup>4</sup> This procedure was intended to afford elected officials in charter townships the same protection against arbitrary salary reductions during their term of office as their counterparts in general law townships. House Legislative Analysis, HB 5641, May 11, 1982. The General Law Township Act provides in relevant part: "The salary of an elected township official or an official appointed to fill a vacancy shall not be decreased during the official's term of office unless the responsibilities and requirements of that office are diminished and the official consents in writing to the reduction in salary." MCL 41.95(2).

A reduction in salary may also occur without consent where a township supervisor's salary is established based upon the expectation that the supervisor will perform the assessing function and the supervisor, in fact, does not do so. But the remaining portion of the supervisor's salary, based upon the remaining duties he or she is expected to perform, may not be reduced without the supervisor's consent. This proviso, however, does not conversely mean that a supervisor may, without a corresponding reduction in his remaining responsibilities, reduce his or her salary merely by consent, nor does it apply to any officer other than a township supervisor.

Section 6a(1)(b) is clear – a salary established by a compensation commission *shall be the salary* absent timely rejection by two thirds of the members elected to and serving on the township board. Based upon the information provided with your request, the township board did not so reject the salaries established by the Compensation Commission for 2009, nor have you provided any information that the responsibilities and requirements of the various offices in question have been reduced.

It is my opinion, therefore, in answer to your first question, that, in accordance with the mandates set forth in section 6a of the Charter Township Act, MCL 42.6a, an elected official of a charter township may not consent to a reduction in his or her salary during the official's term of office unless the consent is in writing and there is a corresponding reduction in the officer's responsibilities and requirements.

You also ask, if an official's salary was improperly reduced, what action may be taken to remedy the matter.

As opined in OAG No 6961, recognizing that there may be tax consequences, there is no law preventing an official from voluntarily returning a portion of his or her salary to the township.

It is my opinion, therefore, in answer to your second question, that if an elected township official's salary has been improperly reduced, the township should pay the unpaid portion minus the applicable payroll deductions. The official may then voluntarily return to the township all or a portion of any compensation received.

MIKE COX  
Attorney General