

Thus, the superintendent of schools member of State Tenure Commission is probably included within the term "teacher" as set forth in Article I, Sec. 1, and the legislature made a proper distinction from the term "teacher" by using the words "classroom instructor" in Article VII, Sec. 1 of the Tenure of Teachers Act to insure that there are two classroom instructor members of the commission.

Webster's Third New International Dictionary defines the word "classroom" as "a place for conducting formal instruction of students by a teacher in a school." This same dictionary defines the word "instructor" as "one who instructs: Teacher."

It must follow that Article VII, Sec. 1 of the Tenure of Teachers Act, as amended by Act 242, P.A. 1963, requires that two of the five members of the State Tenure Commission must be teachers who provide formal instruction of students in a school.

A person who serves as a full time counselor to students but does not perform any direct classroom instruction in any subject area cannot serve as a classroom instructor member of the State Tenure Commission.

Therefore, it is the opinion of the Attorney General that the term "classroom instructor" found in Article VII, Sec. 1 of Act 4, P.A. 1937, Extra Session as amended by Act 242, P.A. 1963 includes teachers who provide formal instruction of students in a school but not a person who devotes his full time as counselor to students.

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**SCHOOLS: Districts – Board.**

**Effect on board members already in office of salary voted for first time.**

Board members of a third class school district, already in office when a salary is first authorized by the electors, may not receive such salary prior to the expiration of their current term.

No. 4459

October 12, 1965.

The Honorable Joseph N. Snyder  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion on a question which can be stated as follows:

Where a statute provides that school board members shall receive no compensation unless authorized by the electors of the district, and the same section prohibits an increase of salary after election, may those board members already in office at the time a salary is first authorized begin to receive the salary prior to the expiration of their current term?

Act 269 of 1955, as amended (C.L.S. 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq.) is known as the School Code of 1955. Section 112 of the School Code, concerning the board of a third class school district, provides in pertinent part that:

"No member of such board or officer thereof, except the secretary and treasurer, shall receive any compensation for any service rendered the district, unless authorized by the qualified electors of the district: Provided, That the salary of any member of the board shall not be increased nor shall the salary of any member be decreased after his election or appointment."

You inform me that board members in certain school districts have been serving without salary and that the voters have now authorized a salary by a proper election pursuant to the above statutory section. The fact that the terms of some board members elected previous to the time a salary is first authorized extend beyond the time when the salary goes into effect has led to your submission of the above stated question.

The Michigan Constitution of 1908, Article XVI, Section 3, contained a prohibition similar to that of Section 112 of the School Code which specified in part that:

"Salaries of public officers, except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment."

The Michigan Supreme Court had an opportunity to rule on a factual situation similar to the one you present in the light of this constitutional provision.

In *Barrus v. Engel*, 186 Mich. 540, an amendment to the charter of the City of Detroit on April 7, 1913, established a civil service commission. The charter amendment expressly provided that the commissioners would not receive any salary or compensation. The commissioner involved was appointed on June 6, 1913, for two years. On November 3, 1914, the electors amended the charter to provide that each commissioner could receive a salary of not to exceed \$3000 as determined by the City Council and the Council set a \$2000 salary for each commissioner. Both the above constitutional provision and the Home Rule Act prohibited a change in salary after commencement of the term of office.

When the commissioner brought an action to compel payment of the salary, a writ of mandamus was denied. The constitutional and statutory prohibition of an increase in salary prevented the commissioner from receiving a salary during his current term where the charter under which he was appointed had prohibited the payment of a salary. It was held that payment of a salary for the first time when previously prohibited was equivalent to an increase and violated the policy behind the constitutional and statutory prohibitions. The Court explained its decision in these terms:

"Restrictive provisions of this class are universally recognized as in the interest of good government and founded on sound reasons of public policy. They are adopted for the two-fold purpose of protecting the public by restraining those in office from taking advantage

of their positions and official influence to unduly secure added compensation not contemplated and to which they were not entitled when they were selected for an accepted office, and also to secure each individual officer in enjoyment of the emoluments provided and rightfully to be expected when he accepted his office, by protecting him from any unfriendly power which might, for any reason, otherwise reduce or abolish them. While the person accepting an office without salary or other emoluments attached, and in creating which it was expressly declared there should be none, could need no protection in that particular, it is evident that the paramount public interests are as much exposed to the contingency which the prohibition is intended to guard against as though he commanded a salary. This reason for the prohibition seems to apply with equal, if not greater, force to one holding a nonsalaried office." (pp. 545-546)

In my opinion, the Court's reasoning is equally applicable to the situation you have presented where the statute prohibits an increase in salary after election. It is conceivable that a board member's position could be used to influence the authorization of a salary. Public policy requires that such a possibility be discouraged.

That the prohibition of such a constitutional provision or statute is applicable to providing a salary where there was none before and a salary was initially prohibited is supported by cases from other jurisdictions as well. Cases are collected in an annotation entitled: "Constitutional provision against increase in compensation of public officer during term of office as applicable to statute providing for first time for compensation for office." 144 A.L.R. 685 and Supplements.

To be distinguished is the situation where a salary is required by statute but through oversight is not provided for specifically before the term begins. In that case, nothing prevents a salary from becoming immediately effective. (Opinion of the Attorney General No. 0-78, dated February 3, 1943, O.A.G. 1943-44, p. 269; 144 A.L.R. 685 at p. 689).

Your question is, therefore, answered in the negative. Those board members whose terms extend beyond the time the salary was first authorized are ineligible to receive the salary during their current term.

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