

**LETTER OPINION
2004-L-19**

March 5, 2004

Mr. Donald R. Becker
Linton City Attorney
PO Box 658
Linton, ND 58552-0658

Dear Mr. Becker:

Thank you for your letter asking whether the city council violated N.D.C.C. § 40-08-15 when it raised the mayor's salary after the mayor's term of office had begun. You also asked whether the city ordinance raising the mayor's salary could take effect on the date of the council's resolution, rather than on the date it was published in the newspaper.

You stated that the Mayor of Linton was elected to a four-year term in June of 2002. On July 1, 2002, the Linton City Council met, accepted the results of the election, elected council officers, appointed city officers, performed other council business, and they and the mayor signed their oaths of office. In addition, the council voted to increase the salary for the mayor effective July 1, 2002. See Linton, N.D. Ordinance 02-8-1 (Sept. 3, 2002).

At the time this action took place, the language of N.D.C.C. § 40-08-15 stated "[t]he mayor shall receive such compensation as the city council may direct by ordinance, but his compensation shall not be changed during his term of office." (Emphasis added.)

This office addressed a similar issue in N.D.A.G. 96-L-76. This letter stated:

N.D.C.C. ch. 40-08 does not define "term of office." The words must, therefore, be construed in their ordinary sense. N.D.C.C. § 1-02-02.

As generally understood, the word "term" relates to a "fixed and definite period of time; implying a period of time with some definite termination." Black's Law Dictionary 1470 (6th ed. 1990). "Term of office," therefore, means "the fixed and definite period of time which the law describes that an officer may hold an office." Sueppel v. City Council of Iowa City, 136

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N.W.2d 523, 527 (Iowa 1965); see also Black's Law Dictionary at 1471. The term of office is separate and distinct from the tenure of the individual officer, and the tenure of an officer may be greater or less than the fixed term of office. See State ex rel. Spaeth v. Olson ex rel Sinner, 359 N.W.2d 876 (N.D.1985). Thus, the prohibition that a city council may not change a mayor's compensation during the term of office prohibits the city council from changing the mayor's compensation during the mayor's fixed term of office, which is four years pursuant to N.D.C.C. § 40-08-14.

N.D.A.G. 96-L-76. A mayor's term under the city council form of government begins on the fourth Tuesday of June of the year in which the person is elected. N.D.C.C. § 40-14-03. Thus, the mayor's *term* started on June 25, 2002, even though his *tenure* did not start until July 1, 2002. It is my opinion that since the mayor's term had already begun when the council voted to change the mayor's salary, Ordinance Number 02-8-1 cannot apply to the mayor's current term of office.

It is important to note that the 58th Legislative Assembly amended N.D.C.C. § 40-08-15 to allow the city council to change its mayor's compensation even during the mayor's current term. This section, which became effective August 1, 2003, states "[t]he mayor shall receive such compensation as the city council may direct by ordinance." N.D.C.C. § 48-08-15. As such, the city council is free to make changes to the mayor's salary effective on or after August 1, 2003.

You also asked whether the city could give its ordinance retroactive application. Because I conclude that the statute prohibited changing the salary, the ordinance was invalid. As a result, there is no need to address this issue.

Sincerely,

Wayne Stenehjem
Attorney General

njl/vkk