

**LETTER OPINION**  
**96-L-76**

April 24, 1996

Mr. Mark J. Butz  
City Attorney  
PO Box 227  
Rugby, ND 58368

Dear Mr. Butz:

Thank you for your April 2, 1996, letter requesting my opinion regarding whether N.D.C.C. § 40-08-15 prohibits an incumbent mayor's salary from being increased for subsequent terms of office in a traditional council city.

N.D.C.C. § 40-08-15 provides:

The 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.

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 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. Section 40-04-15 does not prohibit a city

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council from changing the compensation of an incumbent mayor for future terms of office. This conclusion is supported by case law as well as the policy behind N.D.C.C. § 40-08-15.

There are no prior Attorney General's Opinions addressing this issue. However, in a March 22, 1984, letter from Attorney General Robert O. Wefald to Kramer City Auditor Nancy Vormestrand, Attorney General Wefald wrote:

[N.D.C.C. § 48-08-15] states that the compensation for mayor cannot be changed during the term of office. Thus, should you wish to change the amount of salary for the mayor of your city, such change would have to occur now by adoption of a city ordinance and could only be effective during the next term of office for the person then holding the office of mayor.

Although not explicitly stated, this language indicates an ordinance changing the mayor's salary would effect an incumbent mayor if the mayor is reelected for an additional term.

In State ex rel. Emmons v. Farmer, 196 S.W. 1106 (Mo. 1917), the court addressed the application of a provision of the Missouri Constitution which prohibited the increase of a county officer's compensation during the officer's term of office. The court rejected the argument that an officer's compensation could not be changed if the officer was reelected to a second term. The court said:

It is so plain that this view is wrong that we but pause to state the contention and content us with so characterizing it. Each official term stands by itself. The constitutional provision forbidding an increase or decrease of compensation during a term of office has reference to the period fixed as a term by statute only, and in no wise refers to the individual who may incidentally happen to be the incumbent for more than one term.

Id. at 1109; see also Schanke v. Mendon, 93 N.W.2d 749, 754 (Iowa 1958) (language stating salary may not be increased or diminished during term of office does not prohibit increase passed after election but before term of office begins); State ex rel. O'Connell v. Dubuque, 413 P.2d 972, 981 (Wash. 1966) (legislator has the right to stand for election in common with all other citizens when the term receiving the statutorily increased salary does not overlap the legislative term).

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The purpose of N.D.C.C. § 40-08-15 supports the finding that the prohibition of salary increase relates to the term of office, and not the individual holding the office. As explained in Castree v. Slingerland, 248 N.Y.S. 746, 748 (N.Y. Sup. 1931), the purpose of statutes which prohibit public officials' salaries from being increased or diminished during a term of office

is not only to protect the public against the evil of permitting a public official to use his official power and prestige to augment his own salary, but also to protect him against the equally unjust action of a reduction in his compensation by an unfriendly board having authority to fix the salary. This beneficent legislation removes from the lawmakers the temptation to control the other branches of government by promises of reward in the form of increased compensation or threat of punishment by way of reduced salaries.

See also Rice v. National City, 64 P. 580, 581 (Cal. 1901) ("The object of the statute is to protect the incumbent against a reduction of compensation during his occupancy of the office, and also to take away all inducement to use his official influence and efforts to procure an increase of it during his incumbency."); Delardas v. County Court of Monongalia County, 186 S.E.2d 847, 851 (W.Va. 1972).

Because a public official has no assurance of being reelected, the above-policy only applies to an incumbent's current term of office. Accordingly, it is my opinion that N.D.C.C. § 40-08-15 prohibits a change in an incumbent mayor's salary during the current term of office; it does not prohibit a change in compensation during the next term of office for the person then holding the office of mayor, even if the incumbent mayor is reelected.

I do point out that there are two circumstances under which an incumbent mayor's compensation can be changed. As noted in State ex rel. Peterson v. Olson, 307 N.W.2d 528, 535 n.3 (N.D. 1981), "when new duties are imposed upon a public officer, which duties are not mere incidents of the office or are not germane to the office, but are beyond the scope of the office as it had previously existed or functioned, the public officer may receive additional compensation for the performance of such duties without violating a constitutional [or statutory] inhibition against an increase of salary during the term of office." Also, if a city council, before the term of office of a mayor commences, adopts an ordinance providing a salary change to take effect after such term has commenced, N.D.C.C. § 40-08-15

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would not be violated because the terms of compensation would have been fixed or prescribed by ordinance when the term of office commenced. See Bland v. Jordan, 291 P.2d 205 (Ariz. 1955), and cases cited therein.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

DAB/tmb