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STATE OF NEBRASKA
OFFICIAL
DEC 17 1992
DEPT. OF JUSTICE

DATE: December 14, 1992

SUBJECT: Elected County Officials; Increased Contributions to the County Employees Retirement System Provided in Legislative Bill 1057.

REQUESTED BY: Jack E. Nellson, Director
Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have requested the opinion of this office regarding application of the provisions of Legislative Bill 1057, to the compensation of elected county officials whose term of office commence January 1, 1993. The specific question you have asked is whether an elected official whose term of office expires January 1, 1993 "be allowed to contribute 4% to the retirement plan effective July 1, 1993, even though most terms expire January 1, 1995."

LB 1057, passed during the 1992 legislative session, amended provisions of the Retirement Plan for Nebraska Counties by increasing employee contribution rates from 3.2 per cent to 4 per cent of the employees compensation. Following amendment, Neb. Rev. Stat. § 23-2307 (1992) states in relevant part that "[E]ach employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four percent of his or her compensation for each pay period. . . ." Section 4 of LB 1057 provides that the provisions codified at § 23-2307 shall have an operative date of July 15, 1993.

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If we understand your question correctly, your concern is whether increased contributions for elected officials whose term of office commence January 1, 1993, may conflict with constitutional provisions which prohibit increases or decreases in compensation for public officers within a particular term of office. We believe that officials whose term of office commence on or after January 1, 1993 may participate with the increased contribution amounts provided in LB 1057 with an operative date of July 15, 1993.

Article III, Section 19 of the Nebraska Constitution in pertinent part states:

> The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement, <u>nor shall the compensation of any public officer, including any officer whose compensation is fixed by the legislature, be increased or diminished during his term of office</u> except that, when there are members elected or appointed to the Legislature or officers elected or appointed to a court, board, or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of the Legislature or of such court, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. . . .

(Emphasis added).

It is established that the constitutional provisions regarding compensation of public officers with a fixed term of office are applicable to both the state and all political subdivisions. <u>Retired City Civ. Emp. Club of Omaha v. city of Omaha Emp. Ret. Sys.</u>, 199 Neb. 507, 260 N.W.2d 472 (1977). And, this constitutional prohibition has been interpreted to preclude any diminution or increase in the salary or compensation of a public official during his term of office. <u>State ex rel. Laughlin v. Johnson</u>, 156 Neb. 671, 57 N.W.2d 531 (1953).

On numerous occasions, the Nebraska Supreme Court has held that public employee retirement benefits or pensions constitute deferred compensation for services rendered Halpin v. State Patrolmen's Retirement System, 211 Neb. 892, 320 N.W.2d 910 (1982); Gossman v. State Employees Retirement System, 177 Neb. 326, 129 N.W.2d 97 (1964). Accordingly, the compensation of county officials may not be increased nor diminished through increased contribution rates to the retirement plan during the official's existing term of office. Also See letter Opinion of the Attorney General dated May 3, 1984.

We believe that the increased contribution amounts do not fall within the prohibition of Article III, Section 19 for those officials whose terms of office commence on or after January 1, 1993. What is critical is that the compensation of a public officer be known and defined at the beginning of the term. LB 1057 was enacted prior to the beginning of a term of office commencing on or after January 1, 1993. What the constitution prohibits is the increase or decrease effected by the Legislature during, not prior to, an officer's term of office.

For the same reasons, officials whose term of office commenced prior to the passage of LB 1057 in 1992 may not participate in the increase in retirement contributions until expiration of the existing term. We have reached similar conclusions regarding increases in salaries for state officials in Opinion of the Attorney General No. 86031, March 10, 1986. In that opinion, it was concluded that there can be no subsequent alteration of that amount (compensation) during his or her term of office.

Finally, we note that Article III, Section 19 of the Nebraska Constitution provides as follows concerning certain public officials serving on various public bodies whose members have terms that commence and end at different times:

> . . . except that, when there are members elected or appointed to the Legislature or officers elected or appointed to a court, board, or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of the Legislature or of such court, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. . . .

Accordingly, in our opinion the increased contribution amounts do not fall within the prohibition of Article III, Section 19 for those officials who are members of various boards and so forth, one or more of whose members terms of office commence on or after January 1, 1993.

Sincerely yours,

DON STENBERG
Attorney General

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Assistant Attorney General

Approved By:

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21-354-6.92c