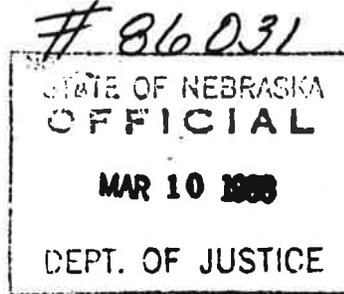


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: March 10, 1986

SUBJECT: Salary Increases for Constitutional Officers

REQUESTED BY: Senator Tom Vickers
Nebraska State Legislature

WRITTEN BY: Robert M. Spire
Attorney General

Ruth Anne Evans
Assistant Attorney General

You have requested an opinion from our office on the constitutionality of LB 43, as amended, which now includes a tiered increase in salaries for constitutional officers. In particular, you have asked whether such a provision would be in violation of Article III, Section 19 of the Nebraska Constitution which provides in part that: "[N]or 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."

LB 43, as amended, provides for increases in salaries for constitutional officers on a gradual basis, with increases in 1988, 1989, and 1990. Nebraska case law has consistently interpreted Article III, Section 19 to prohibit any increases or decreases in compensation within a particular term of office. State ex rel. Laughlin v. Johnson, 156 Neb. 671, 57 N.W.2d 531 (1953). The purpose of Article III, Section 19 is to provide a system of checks and balances among the three branches of government.

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Our system of government distributes the powers between three coordinate departments, the legislative, the executive, and the judicial. Each of these three independent departments derives its power directly from the people, and is responsible to them.

State ex rel. Randall v. Hall, 125 Neb. 236, 249 N.W. 756 (1933).

It is clear that the Legislature may increase or decrease salaries of public officers, and that it is free to do so at any session, provided that it acts within constitutional limitations.

Among the positive limitations in our Constitution is the one that any increase or decrease of a constitutional officer's salary cannot take effect during that term of office. It is the purpose of this provision of our Constitution that such officers, upon assuming public duties, will receive as compensation for such services the amounts fixed at the time the duties are commenced, and that they will clearly understand that such compensation cannot be increased during their term of office, nor may it be decreased without conflicting with the clear intent and meaning of the constitutional provision which we are considering.

Id. at 243-244. In a later case, the Nebraska Supreme Court again addressed the purpose for this constitutional provision. "It was designed to protect the individual officer against legislative oppression and, further, to curb the activities of public officers in lobbying to induce the Legislature to increase salaries." Ramsey v. County of Gage, 153 Neb. 24, 43 N.W.2d 593 (1950).

It is clear that LB 43 will increase the salaries of constitutional officers during a particular term. However, it is our opinion that this increase does not fall within the constitutional prohibition of Article III, Section 19. What is critical is that the compensation of a public officer be known and defined at the beginning of the term. There can be no subsequent alteration of that amount during his or her term of office. LB 43 simply provides for a graduated increase in salary during a particular term. An officer assuming that position may only receive the salaries as adopted at the time of taking office. The fact that the Legislature has seen fit to adopt a graduated scale of salaries does not offend the

Constitution. The Legislature could not, however, make any changes that would increase or decrease these amounts during an individual's term of office.

Very truly yours,

ROBERT M. SPIRE
Attorney General

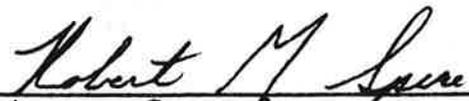


Ruth Anne Evans
Assistant Attorney General

RAE:cw

cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved:


Attorney General