



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Restrictions on Changing Public Officer Compensation

The Ohio Constitution prohibits certain changes to the compensation of public officers during their terms of office. Affected offices include both elected and appointed positions. Some officers are prohibited from any change in compensation, while others are prohibited only from receiving an increase of compensation. The restrictions apply to each term of office, not to an increase that applies to a subsequent term. Legislation enacted in late 2018 increased compensation for state, county, and township officers.

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No change in compensation during term of office

Three provisions of the Ohio Constitution prohibit any change in compensation during an officer’s term of office. One applies to members and officers of the General Assembly, one applies to executive branch offices established in Article III of the Ohio Constitution, and one applies to other public officers.

Under Article III, Section 19 of the Ohio Constitution, executive officers whose offices are constitutionally established are prohibited from receiving an increase or decrease in compensation during their terms of office. The provision reads as follows:

The officers mentioned in this article shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected.

The offices established by Article III are the offices of Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General. Under this provision, the compensation for those offices must be established by law, and it cannot be either increased or decreased during an officeholder's terms of office.

Members and officers of the General Assembly similarly must receive a fixed compensation, which must be established by law, and which cannot change during their terms of office. Article II, Section 31 sets forth this requirement as follows:

The members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office.

Similar to the restrictions imposed on the constitutional executive offices and members and officers of the General Assembly, Article II, Section 20 prohibits any change to the compensation of other officers in this state during their terms of office:

The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.¹

Thus, the General Assembly is required to establish the term of office and compensation for all other "officers," and the compensation cannot change during the officer's term of office, unless the office is abolished and reestablished.

What constitutes an office subject to the prohibition?

There is no constitutional or statutory definition of what constitutes an office. However, the Ohio Supreme Court has developed, in a series of cases, a test for determining whether a particular position is an "office" or employment. To make the determination, the specific details of the particular position are considered. Some of the criteria that the Court has used include whether the person is responsible for taking an oath or providing bond, the independence of the functions exercised by the person, and the character of the person's duties. The Court has considered a single characteristic to be most determinative:

The chief and most decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and by the fact that such duties are conferred upon the appointee by law. If official duties are prescribed by statute, and their performance involves the exercise of continuing, independent

¹ The Ohio Constitution can be amended only by a vote of the people. Therefore, language in the Constitution may appear archaic or may include gender specific terminology. Gender specific terminology should be interpreted as applying to officers of any gender.

political or governmental functions, then the position is a public office, and not an employment.²

Under this test, an office can be either an elected or an appointed position. Thus, the restriction increasing compensation during a term of office applies to both elected and appointed offices.³ The restriction, however, does not apply to a public employee who does not exercise the state's sovereign authority. For example, members of the Public Utilities Commission are officers, since they exercise the sovereign power of the state by regulating public utilities, even though they are appointed and not elected. As a result, they are subject to the ban on a change in compensation during their terms of office.⁴ A clerk appointed by a board of county commissioners, however, is simply an employee, and is not subject to the restriction, since the clerk's duties are clerical in nature, and the clerk does not exercise political or governmental authority.⁵

What constitutes a change in compensation?

The prohibition precludes an officer from receiving a change in compensation that occurs during the officer's term of office. Whether the officer's salary changes during the officer's term of office, however, is not the end of the inquiry. The circumstances of a salary change, or a change in the officer's fringe benefits, must also be considered in determining if the officer received a prohibited change in compensation.

For example, a statute that was enacted before an officer took office may key the officer's salary to another factor, such as the population of the officer's county. Or, the type of fringe benefits, such as medical insurance, provided to an officer may change during the term of office. Although the constitution does not provide a detailed description of what constitutes compensation, case law provides guidance as to what constitutes a prohibited compensation increase.

Regarding compensation keyed to another factor, the Ohio Supreme Court considered the interpretations of other states in holding that:

[A] statute effective before the beginning of the term of a public officer whereby [the officer's] compensation is automatically increased or diminished during [the officer's] term by reason of increase or decrease of the population or of the valuation of the taxable property as shown by a later census or tax duplicate, is not in conflict with a constitutional inhibition to the effect that the compensation of such officer shall not be increased or decreased during [the officer's] term of office.⁶

² *State ex rel. Landis v. Board of Commissioners*, 95 Ohio St. 157, 159 (1917).

³ *State ex rel. McNamara v. Campbell*, 94 Ohio St. 403 (1916).

⁴ *Donahey v. State*, 101 Ohio St. 473 (1920).

⁵ *State ex rel. Landis v. Board of Commissioners*, 95 Ohio St. 157, 159 (1917).

⁶ *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273 (1942).

Thus, although a statute keying compensation to population may have an incidental effect of increasing an officer's salary following a census, the intention of the statute was not to increase the officer's salary midterm. Instead, the intention was to base the salary on the county's population. "When a statute setting forth the formula for the compensation of an officer is effective before the commencement of the officer's term, any salary increase which results from a change in one of the factors used by the statute to calculate the compensation is payable to the officer."⁷

On the subject of fringe benefits, the Ohio Supreme Court has held that employment benefits, such as payments for medical insurance, are included in the term "compensation" for the purpose of the restriction.

Fringe benefits, such as the payments made here, are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check. It is obvious that an office holder is benefitted and enriched by having [the officer's] insurance bill paid out of public funds, just as [the officer] would be if the payment were made directly to [the officer], and only then transmitted to the insurance company. Such payments for fringe benefits may not constitute 'salary,' in the strictest sense of that word, but they are compensation.⁸

In 1976, the Court examined the law authorizing the county health insurance plan and approving payment of insurance premiums for county officers, which was enacted after the officeholders took office. The Court held that, because the new insurance benefit was an increase in "compensation," the officeholders were prohibited from having the county pay their insurance premiums during their terms of office. Subsequent officeholders would be eligible to have their insurance benefits paid as part of their compensation, since the law establishing the benefit would have taken effect prior to their terms of office.

What if an officer is reelected or reappointed?

The prohibition on a change in compensation applies to the officer's specific term of office, not to the statutory term of the office. If, for example, an officer is appointed or elected to fill the remainder of an office's unexpired term, that officer would be entitled to the higher salary if a law increasing the salary of the office took effect prior to the officer taking office, even if the salary increase was enacted during the full term of the office for which the officer is serving an unexpired portion.⁹

If the law establishing the office requires an officer hold over until the officer's successor is appointed, the officer is not eligible for increased compensation during that holdover time, as it is part of the original term of office. But if the officer is then appointed to a successive term, the officer would be eligible to receive the higher compensation for that subsequent term, if the

⁷ *Schultz v. Garrett*, 6 Ohio St.3d 132 (1983).

⁸ *State ex rel. Parsons v. Ferguson*, 46 Ohio St.2d 389 (1976).

⁹ *State ex rel. Glander v. Ferguson*, 148 Ohio St. 581 (1947).

compensation increase became law during either the officer's prior term or during the time that the officer held over from the prior term.¹⁰ If an officer's term of office begins after passage of the statute that fixes the higher salary, the officer is entitled to that higher salary.¹¹

Compensation of judges

Similar to the provisions that apply to other public officers, Article IV, Section 6 of the Ohio Constitution restricts certain changes in compensation during the term of a judicial office. As opposed to other officers, however, Article IV, Section 6 prohibits only the diminishment of compensation during a term of office. As a result, it appears that a judge's compensation may be increased during the judge's term of office, but not decreased.

The judges of the Supreme Court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall, at stated times, receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office.¹²

The same section also provides that all judges of the Supreme Court, other than the Chief Justice, must receive the same compensation. Similarly, all judges of courts of appeals must be paid the same. Judges of courts of common pleas and all other courts of record must be paid compensation as provided by law.

Municipal court judges, however, are subject to a different rule. Since they are not specifically listed in Article IV, Section 6, they are subject to the general prohibition against any change in compensation.¹³ Thus, while the compensation for municipal court judges cannot be diminished, it also cannot be increased during their terms of office.¹⁴

Exception for municipal corporations

There is one significant caveat to the general rule that public officers' compensation cannot change during their terms of office. Article XVIII, Section 7 of the Ohio Constitution authorizes a municipal corporation to exercise "all powers of local self-government." Accordingly, establishing the compensation of municipal officers is a power of local self-government, and officers of a municipal corporation are not subject to the Article II, Section 20 restriction on compensation changes during their terms of office.¹⁵

Recent compensation increase

In late 2018, S.B. 296 of the 132nd General Assembly increased the compensation for members of the General Assembly and for the Governor, Lieutenant Governor, Secretary of

¹⁰ *State ex rel. Glander v. Ferguson*.

¹¹ *Zangerle v. State ex rel. Stanton*, 105 Ohio St. 650 (1922).

¹² Ohio Constitution, Article IV, Section 6(B).

¹³ *State ex rel. Wallace v. City of Celina* (3rd Dist. 1971), *affirmed* 29 Ohio St.2d 109.

¹⁴ Ohio Constitution, Article II, Section 20.

¹⁵ *Loux v. City of Lakewood*, 120 Ohio App. 415 (8th Dist. 1963), appeal dismissed, 176 Ohio St. 154 (1964).

State, Auditor of State, Treasurer of State, and Attorney General.¹⁶ The compensation for these offices had last been adjusted in 2008. S.B. 296 increased the compensation amounts by 4% in 2019, 4% in 2020, 3% in 2021, and 1.75% annually in 2022 through 2028. It also increased the supplements provided to General Assembly members who serve certain roles on committees, which were last increased in 2001.

Because S.B. 296 took effect before the 133rd General Assembly began, all House members and about half of the Senate members could receive the increases during the 133rd General Assembly. The remaining Senate members (who were mid-term) will receive the increases (with COLAs for 2020 and 2021) when the 134th General Assembly begins in 2021 if reelected. And because the act took effect before the statewide executive officers' terms began on January 14, 2019, they could receive the increases.

S.B. 296 also increased the compensation of judges and county and township officers through 2028. For more details about the increases, including tables itemizing the increased salary amounts, see the [LSC final analysis](#) and [fiscal note](#) for S.B. 296.

Finally, S.B. 296 established a Public Office Compensation Advisory Commission and required it annually to recommend a compensation plan for the officers whose salaries are fixed by the General Assembly. However, the Commission was abolished, effective February 5, 2020, by S.B. 26 of the 133rd General Assembly. At the time, no Commission members had been appointed. (S.B. 296 did not authorize the Commission to change the compensation of officers whose salaries are fixed by the General Assembly. The Ohio Supreme Court has held that the General Assembly cannot delegate this authority.¹⁷)

¹⁶ S.B. 296 also enacted revisions to the Ohio Public Safety Officers Death Benefit Fund. Governor Kasich vetoed S.B. 296 and the General Assembly overrode the veto in December 2018.

¹⁷ *Neff v. Bd. of County Commissioners*, 166 Ohio St. 360 (1957) and *State ex rel. Godfrey v. O'Brien*, 95 Ohio St. 166 (1917).