



Office of the Attorney General

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April 3, 1990

David G. Jennings, Esquire  
Post Office Box 10943  
Charleston, South Carolina 29411

Dear Mr. Jennings:

As counsel for the Mt. Pleasant Waterworks and Sewer Commission, you have asked for the opinion of this Office on two questions concerning compensation of the commission members:

1. May the Commissioners establish a salary or other payment to themselves for their services as commissioners?
2. If the answer to question one is yes, are there any restrictions as to the amount of such payment or the effective date for the commencement of such payment?

Background

In your thorough memorandum of law you have advised, by way of background, that the current official population of the Town of Mt. Pleasant is 26,416 (based upon a special census undertaken in 1989). The Mt. Pleasant Commission of Public Works was created in 1934 pursuant to the terms of the statute now codified as Section 5-31-210 of the South Carolina Code of Laws. The commission consisted of three commissioners until February 1990, at which time a special election was held to elect two additional commissioners, pursuant to Act No. 117 of 1989, which amended Section 5-31-210 of the Code. You further advised that the commissioners currently receive a payment of \$599.00 per year plus health insurance.

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### Statutes

Consideration of your questions must begin with reference to Section 8-15-10 of the Code, which provides as follows:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

A review of the State Constitution reveals only one provision of concern to this question: Article III, Section 30 would prohibit the payment of additional compensation to public officers, agents, employees, or the like after services have been rendered. To avoid difficulties relative to this constitutional prohibition, compensation or increases thereof should be undertaken prospectively. See Op. Atty. Gen. dated December 8, 1987. Any other relevant provisions must also be examined, as well.

The only statutory provision relative to payment of a salary to commissioners of public works is apparently Section 5-31-220, which contains provisions for commissions of public works in cities of 50,000 or more inhabitants. That section provides in part, "In such cities such commissioners of public works shall serve without compensation." In Op. Atty. Gen. No. 4335, this Office concluded that a city could not provide salaries to a commission of public works established under current Section 5-31-220 of the Code. Because the population of the Town of Mt. Pleasant is less than 50,000 inhabitants, this Code section would not be applicable to the Mt. Pleasant Commission of Public Works.

As you note in your memorandum, inclusion of a particular thing in a statute implies exclusion of all other things not mentioned. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938). The fact that commissioners of public works in cities of 50,000 or more inhabitants are statutorily prohibited from receiving compensation implies that commissioners in cities of less than 50,000 inhabitants are allowed to be compensated.

Based on the foregoing, we concur with your opinion that Section 8-15-10 of the Code would permit the Town of Mt. Pleasant Commission of Public Works to establish or increase salaries for its members. Neither Section 8-15-10 nor any other statute appears to establish any limitation on such salary or increase.

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Similarly, no statute would establish the effective date of such salary or increase. Article III, Section 30 of the State Constitution would mandate that such salary or increase be prospective rather than after services have been rendered. As you point out, statutes such as Sections 4-9-100 (as to salaries of members of county councils) and 5-7-170 (as to salaries of a mayor and members of city council) specifically provide for the effective date of the salary or increase; there is no such statute with respect to commissioners of public works. Thus, the only guidance in this instance is from Article III, Section 30. Thus, as long as the salary or increase is effective prospectively, no other restriction appears to be applicable.

In conclusion, we concur with your conclusions that the Town of Mt. Pleasant Commissioners of Public Works may establish a salary for themselves or increase such salary. There appears to be no restriction as to the amount of the salary or increase. The only restriction as to the effective date would be Article III, Section 30 of the State Constitution, requiring that compensation be paid on a prospective basis.

The foregoing discusses only the relevant statutory and constitutional provisions and reaches conclusions only as to questions of law. No comment is made as to any question of policy or any other factor which may be considered in determining whether to pay a salary or increase thereof; this opinion is not to be considered an endorsement of any particular salary or proposal which may be pending before or adopted by the Mt. Pleasant Commissioners of Public Works.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

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