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THE LEGISLATURE OF A MUNICIPALITY MAY RAISE OR LOWER THE SALARY OF A PERSON SERVING AS DIRECTOR OF SERVICE AND SAFETY, IF SUCH PERSON'S OFFICE DOES NOT CONSTITUTE SERVING A TERM—OPINION 3027, OAG, 1962, §§731.07, 733.03, 731.07, R.C., ARTICLE II, SEC. 20, O.C.

SYLLABUS:

A person serving as director of service and safety of a city operating under the statutory plan of municipal government, the offices having been merged under Section 733.03, Revised Code, does not serve in a "term" within the purview of Section 731.07, Revised Code, and the legislative authority of the city may increase or decrease his salary during his tenure in office. Opinion No. 3027, Opinions of the Attorney General for 1962, issued on May 26, 1962, overruled.

Columbus, Ohio, July 13, 1962

Hon. E. Raymond Morehart, Prosecuting Attorney
Fairfield County, Lancaster, Ohio

Dear Sir:

In my Opinion No. 3027, issued to you on May 26, 1962, I held as follows:

> "Because of the prohibition of Section 731.07, Revised Code, the legislative authority of a city, which operates under the statutory plan of municipal government, may not increase the salary of the person serving as director of service and safety of the city during said person's term of office. (Opinion No. 4322, Opinions of the Attorney General for 1954, page 498, approved and followed.)

My conclusion in that opinion was based on Section 731.07, Revised Code, which reads, in part, as follows:

> "The salary of any officer, clerk, or employee of a city shall not be increased or diminished during the term for which he was elected or appointed.
>
> "* * * * * * * * *"

Since writing that opinion I have noted that Section 735.01, Revised Code, providing for appointment of a director of public service by the mayor, and Section 737.01, Revised Code, providing for the appointment of a director of public safety by the mayor, do not provide any specific term for either office. Further, Section 733.03, Revised Code, reads as follows:

> "The mayor shall be the chief conservator of peace within the city. He may appoint and remove the director of public service, the director of public safety, and the heads of the subdepartments of public service and public safety, and shall have such other powers and perform such other duties as are conferred and required by law.
>
> "In any city the legislative authority thereof may, by a majority vote, merge the office of director of public safety with that of director of public service, with one director to be appointed for the merged department."

Since the mayor has the power to appoint and to remove the director of public service and the director of public safety, it appears clear that

a person serving in either capacity serves at the pleasure of the mayor, and has no term of office. As stated in 67 Corpus Juris Secundum, 196, Section 43:

> "Where the term of office is not fixed by law, the officer holds at the will of the appointing power, and strictly speaking has no term of office."

Section 733.03, *supra,* provides that the two offices may be merged into one office, with one director for the department. While it is not specifically so stated, it appears clear that the director of the one department is appointed by, and may be removed by, the mayor. Accordingly, a person serving as director of the merged department has no set term and serves at the pleasure of the mayor.

Present Section 731.07, *supra,* was at one time Section 1717, Revised Statutes. Referring to that former section of law, it is stated in *State, ex rel. Miller* v. *Massillon,* 2 C. C. N.S., 167, (1904):

> " 'The statute now applies to cases where there is an increase during the term. The word 'term' has significance, as we think, under that section of the statute. It simply means to limit. That is, during the period that the office is limited, during that period his salary shall not be increased. But in this case there is no limit fixed by law. It is at the pleasure of the board of health that gives the health officer his position. It is their pleasure. *It is not a term, for the reason there is no limit to it.* It may be likened unto a tenancy at will, not a term, because it has no limitation. Therefore, it would be difficult to bring such an employe within the terms of Section 1717, Revised Statutes, prohibiting an increase of salary of an officer during his term, whether he be elected or whether he be appointed.* * *
>
> " '* * * His salary is at the will of the board of health. His term of office is at their will; they may terminate it at their pleasure.
>
> " 'Then the question will arise, if that be so, does such a person hold the office for a term? Is there any limit to it, to which he may claim by virtue of his appointment? We think not.
>
> " 'It being then exclusively within the discretion and power of the board of health to fix his salary, there is no reason why it may not be changed at any time at the pleasure of the board, whenever necessity would seem to require it.* * * '
>
> (Emphasis added.)"

Also, in *Mellinger* v. *State,* 16 Ohio Law Abs., 3 (1933), the first paragraph of the headnotes reads:

> "A city police prosecutor whose term of appointment is subject to the will of the appointing power is not protected against a change in salary by the provision of Section 4213 G.C."
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> (Section 4213, General Code, is the immediate predecessor of Section 731.07, Revised Code.)

Further, the first paragraph of the syllabus of Opinion No. 176, Opinions of the Attorney General for 1957, page 22, interpreting a constitutional provision with language similar to that of Section 731.07, *supra,* here concerned, reads:

> "1. An officer whose tenure is 'during the pleasure' of the appointing authority does not hold office during an 'existing term' within the meaning of Section 20, Article II, Ohio Constitution and the inhibition therein of a change in salary 'during his existing term' has no application to the incumbent of such office."

Article II, Section 20, Ohio Constitution, referred to in the 1957 opinion, reads as follows:

> "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."

Accordingly, returning to the instant question, since the director of the merged departments does not have a term of office fixed by law but serves at the pleasure of the mayor, he does not have a "term" within the purview of Section 731.07, Revised Code.

In view of the foregoing, therefore, it is my opinion and you are advised that a person serving as director of service and safety of a city operating under the statutory plan of municipal government, the offices having been merged under Section 733.03, Revised Code, does not serve in a "term" within the purview of Section 731.07, Revised Code, and the legislative authority of the city may increase or decrease his salary during his tenure in office. Opinion No. 3027, Opinions of the Attorney General for 1962, issued on May 26, 1962, overruled.

Respectfully,
MARK MCELROY
Attorney General