



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2020-020

August 20, 2020

The Honorable Kim D. Hammer
State Senator
1201 Military Road PMB 285
Benton, AR 72015

Dear Senator Hammer:

This is in response to your request for an opinion concerning Ark. Code Ann. § 14-42-113. In this regard, you have provided the following background information:

The City of Benton, Arkansas, is a city of the first class. The city attorney is elected to a four-year term. The present city attorney, who is in the second year of a four-year term, has been elected circuit judge and will take the judgeship office at the mid-point of his city attorney term. The vacancy in the office of city attorney will leave an unexpired term of two (2) years that will be filled by appointment under Ark. Code Ann. § 14-43-412, based on my understanding.

By ordinance, the compensation of the city attorney includes a salary, a stipend for office expenses, health insurance, and retirement benefits. The city council is considering modifying the compensation package by removing the stipend for office expenses, an amount that equals approximately \$36,000.00 per year, thereby lowering the total amount of compensation the newly-appointed city attorney will receive. Ark Code Ann. § 14-42-113 states a city council may not decrease the “salary” of a city official during his or her term of office. “Salary” is defined in the statute as the amount of “compensation” the official receives.

In light of the foregoing background information, you have asked the following question:

Based on this information, may the city council lower the total amount of compensation the appointed city attorney will receive by removing the stipend for office expenses in light of the language of Ark. Code Ann. § 14-42-113?

RESPONSE

The answer to your question depends on whether the stipend for office expenses is considered salary. This is a factual question that cannot be definitively decided in the context of an opinion from this office.

DISCUSSION

Subdivision 14-42-113(a)(1) of the Arkansas Code prohibits decreasing a city official's salary during his or her term unless requested by the official; and subdivision 14-42-113(a)(2) requires that when an official whose salary has been decreased pursuant to (a)(1) leaves office prior to the expiration of his or her term, the official's successor shall receive a salary not less than the salary the exiting official received prior to the decrease.¹ Therefore, whether the city council may lower an appointed city attorney's total compensation by removing his or her stipend for office expenses depends on whether the stipend is considered "salary."

I do not have any information regarding how the stipend in question is paid to the city attorney. Whether the stipend payments can be considered salary is ultimately a question of fact that cannot be decided by this office.² If, for example, the city

¹ Ark. Code Ann. § 14-42-113(a) (Supp. 2019) provides as follows:

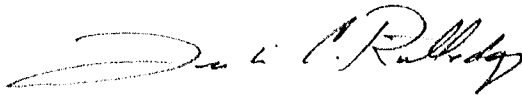
(a)(1) Except as provided in subsections (b) and (c) of this section, the salary of an official of a city of the first class, a city of the second class, or an incorporated town may be increased during the term for which the official has been elected or appointed and may be decreased during the term only if requested by the official.

(2) When any city official whose salary is decreased under subdivision (a)(1) of this section leaves office before the expiration of his or her term, his or her successor shall receive a salary not less than the salary for the office immediately before the salary was decreased under subdivision (a)(1) of this section.

² See, e.g., Op. Att'y Gen. 2019-029 (noting this office's long-standing policy of declining to make factual determinations in the context of rendering official opinions).

attorney must submit receipts for office expenses, after which he or she is reimbursed with stipend funds up to \$30,000 annually, these payments to the city attorney would likely not constitute salary. On the other hand, if the city attorney receives fixed, regular payments of stipend funds along with his or her salary, and the city attorney is expected to pay for office expenses out-of-pocket, then the stipend payments would likely be considered salary. A decision regarding the potential elimination of the city attorney's stipend should be made with the advice of local counsel, taking into consideration all of the particular surrounding circumstances.³

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge", written in a cursive style.

LESLIE RUTLEDGE
Attorney General

³ Acting under the advice of local counsel is especially important, given that attempts to unreasonably reduce the salary of elected officials have led to successful lawsuits against cities. *See, e.g., Crain v. City of Mountain Home*, 611 F.2d 726 (8th Cir. 1979) (striking down as unconstitutional an ordinance passed on the eve of the election reducing city attorney's salary and prohibiting him from the private practice of law as an unconstitutional bill of attainder and also awarding attorneys' fees).