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June 6, 1952

Opinion No. 52-171

Mr. J. Fred Talley
Deputy Real Estate Commissioner
State Real Estate Department
424 State Office Building
Phoenix, Arizona

Dear Mr. Talley:

In your letter of May 22, 1952, you request an opinion from this office concerning the effective date of the increase in salary for the Commissioner and Secretary of the Real Estate Department as provided in Chapter 129 of the Twentieth Legislature, Second Regular Session.

The Arizona Constitution provides that no act passed by the Legislature shall be operative for ninety days after the close of the session of the Legislature enacting such measure except such as require earlier operation to preserve the public peace, health or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions. Chapter 129 would seem to come within neither of the exceptions. Therefore, it would become operative ninety days after the adjournment date of the Twentieth Legislature, making it operative on June 26, 1952.

The only prohibition against the act becoming operative on June 26 in so far as the salaries of the Commissioner and the Secretary are concerned would be if they came within the prohibition prescribed in Article 4, Part 2, Section 17 of the Arizona Constitution which provides:

"(Extra compensation.)--The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office, * * *"

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Opinion No. 52-171
Page two

The Commissioner is appointed under the provisions of Section 67-1711 (c), ACA 1939, as amended, which provides in part:

"Duties.--It shall be the duty of the board to: 1. appoint, with the approval of the governor, and with advice and consent of the senate, the real estate commissioner; 2. fix his compensation, which shall not exceed six thousand dollars (\$6,000) per annum; * * *"

The Secretary is appointed pursuant to Section 67-1707, ACA 1939, which reads as follows:

"Employees.--The commissioner shall appoint and fix the compensation of a secretary and such deputies, assistants, and clerks as may be necessary. The compensation of the secretary shall not exceed two thousand four hundred dollars (\$2,400) per annum."

It will be noted from reading these sections that neither the Commissioner nor the Secretary has a fixed term of office. Thus, the constitutional provision above quoted prohibiting an increase in salary during the term of office has no application in this instance.

Inasmuch as Chapter 129 provides that the salary of the Commissioner shall not exceed \$7,200 per annum and the salary of the Secretary shall not exceed \$3,600 per annum, the exact salary of the Commissioner must be fixed by the Real Estate Board and the salary of the Secretary must be fixed by the Commissioner.

We trust the foregoing answers your questions concerning this matter.

Very truly yours,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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