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APACHE COUNTY GENERAL

March 27, 1954  
Opinion No. 54-52

TO: The Honorable Norman Whiting  
County Attorney  
Apache County  
Court House  
St. Johns, Arizona

RE: Salary increases of Justices of the  
Peace.

QUESTION: Is a justice of the peace who was elected  
in 1950 in a precinct of less than 1,000  
registered voters now entitled to a  
salary increase in accordance with the  
statutory salaries provided for in  
Section 12-711, A.C.A. 1939, as amended,  
when at the time of the 1952 general  
election there were more than 1,000  
registered voters within his precinct?

At its First Regular Session, the Twenty-first Legislature, by concurrent resolution, proposed an amendment to Article 4, Part 2, Section 17, Arizona Constitution, to be submitted to the qualified electors of the State of Arizona for their approval at the Special Election held on September 20, 1953. At that election the voters approved the proposed amendment, which became effective upon proclamation by the Governor. That amendment provides:

"Section 17. 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, other than a justice of the peace, be increased or diminished during his term of office; provided, however, that when any legislative increase or decrease in compensation of the members of any court or the clerk thereof, or of any board or commission composed of two or more officers or persons whose respective terms of office are not coterminous, has heretofore or shall hereafter become effective as to any

member or clerk of such court or any member of such board or commission, it shall be effective from such date as to each thereof."

The term of office for justices of the peace was fixed by section 20-101 A.C.A. 1939, as amended. It provides:

"20-101. Election and term of office.--  
In each justice precinct there shall be elected by the qualified electors of such precinct, at the general election one (1) justice of the peace, who shall hold his office for the term of four (4) years from the first day of January following his election."

This section amended the existing law and increased the term of office of justices of the peace from two to four years. It first affected those justices elected in the general election in 1950 and thus the term of office for those justices now serving began January 1, 1951 and will end December 31, 1954.

In 1952 section 12-711 A.C.A. 1939 was amended to read, in pertinent part, as follows:

"12-711. Salaries of precinct officers.--  
(a) At the regular June meeting of the various boards of supervisors preceding a general election, said boards shall fix the salaries of all precinct officers, excepting justices of the peace and constables whose salaries are hereinafter specifically fixed, for the two-year period commencing on the first day of the following January.  
(b) The monthly salaries of justices of the peace and constables in precincts having more than one thousand (1,000) registered voters shall be:  
1. In precincts having more than one thousand (1,000) and not to exceed three thousand (3,000) registered voters: Justices of the peace, two hundred seventy-five dollars (\$275).

\* \* \* \* \*

The last-cited section above provided for definite mandatory salaries for constables and justices of the peace in precincts having more than one thousand (1,000) registered voters. It removed from the various boards of supervisors the power to exercise their

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discretion as to the amount of compensation for the officers specifically mentioned. This statute, although effective in 1952, was inoperative by virtue of Article 4, Part 2, Section 17, above cited, which prohibited an increase or decrease in the compensation of justices of the peace during their term. The various boards of supervisors, therefore, in fixing the salaries of the justices of the peace for the remaining two years of the term ending December 31, 1954, could not constitutionally comply with the provisions of section 12-711, supra, but could only provide those salaries fixed in June 1950, effective January 1, 1951.

A chronological statement of the facts that have transpired connected with the constitutional and statutory amendments quoted above, would be helpful in clarifying the problem at hand.

The justice of the peace was elected at the general election in 1950. Pursuant to section 20-101, supra, his term of office was to be for a period of four years. The board of supervisors, prior to his election was bound to fix his salary for a period of two years although his term of office was for the four year period. In 1952, there was a general election at which time there were more than 1,000 registered voters in his precinct. Likewise, in 1952 the Legislature amended section 12-711, supra, which in substance made it mandatory that the board of supervisors fix justices of the peace salaries in accordance with the terms of section 12-711 if there were more than 1,000 registered voters in the precinct. However, as previously stated, the statute was inoperative until October, 1953, at which time the constitutional amendment became effective and enabled the board of supervisors to increase the salary of a justice of the peace during his term of office, but the constitutional amendment would not have a retroactive effect on the provisions of 12-711, as it has been well-settled that a constitutional provision does not have retroactive effect unless the provision with particularity so provides. This rule was laid down by the Arizona Supreme Court in the cases of CITY OF PRESCOTT v. O'SULLIVAN, (1935) 46 Ariz. 551, 53 P. 2d 69, and AMERICAN FEDERATION OF LABOR v. AMERICAN SASH AND DOOR CO., (1948) 67 Ariz. 20, 189 P. 2d 912.

Under these facts, then, is the justice of the peace entitled to a raise in accordance with section 12-711? The answer to this problem is wholly dependent upon the question "What is the proper application in point of time of the statutory requirement that there be 1,000 registered voters within the precinct?"

Section 12-711, supra, states that the board of supervisors shall fix the salary of the justice of the peace for a two year period. We presume that the board of supervisors fixed the salary of the justice of the peace in the regular June meeting of 1950,

the salary to be effective January 1, 1951. We also presume that the salary was again fixed by the board at the regular June meeting of June, 1952, the salary to be effective as of January 1, 1953. Is the board of supervisors required to fix the salary again before the next regular June meeting of 1954? We believe they are not, although there may be 1,000 registered voters within the precinct. Stated differently, the board of supervisors would be bound to determine only that there are or are not 1,000 registered voters within a precinct at the time of the regular June meeting held every two years prior to the next election and at no other time.

This conclusion is borne out by the rules stated in 46 Corpus Juris "Officers", Section 95, § b, 1019, wherein it is stated:

"Compensation based on population. An 'annual salary,' based on population as shown by election, must be calculated for the year as a whole. Under a statute basing the amount of compensation on the population of the county and providing for an additional sum for each thousand inhabitants in excess of a certain number, there must be a complete additional thousand inhabitants to entitle the officer to such additional amount.\* \* \*"

Of course, the "annual salary" mentioned in Corpus Juris is in our case a "biennial salary" but the same rule is applicable.

In the case of STATE v. LINVILLE, (1927) 318 Mo. 698, 300 S.W. 1066, the question was decided in accordance with the above rule. The court stated an annual salary "cannot be split up into periods by elections (revealing fluctuations in population) which occur during the year, and (the compensation) must be calculated on a year as a whole." This case was quoted with approval in OVERSTREET v. BOYLE COUNTY FISCAL COURT, (1936) 95 S.W. 2d 585. (Parenthetical matter supplied)

We conclude, therefore, that since the constitutional prohibition against the increase of salaries of justices of the peace was not removed until October, 1953, and since such removal was without retroactive effect and the salary of the justice of the peace was fixed for a two year period from January 1, 1952 to December 31, 1953, the justice of the peace in question is not now entitled to a raise, as a "biennial salary" once fixed, must be calculated on the two year period as a whole and fluctuations in the number of registered voters, within a precinct during this period, do not affect the salary once it has been fixed for such period by the board of supervisors.

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Very truly yours,

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