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Attorney General  
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Phoenix, Arizona 85007

Robert E. Corbin

June 23, 1981

The Honorable Bill Swink  
Arizona State Senate  
State Capitol, Senate Wing  
Phoenix, Arizona 85007

Re: I81-083(R81-079)

Dear Senator Swink:

We are writing in response to your letter of May 12, 1981, in which you asked two questions concerning compensation of justices of the peace pursuant to Ch. 289, Laws of 1981 (First Reg. Session, 1981). The enactment establishes a salary scale for justices of the peace and provides that the Commission on Salaries of Elective State Officers, a constitutionally created body, shall review adjustments to the level of compensation.

Your first question is whether the Commission may constitutionally review justice of the peace salaries. The Commission is authorized by Article 5, § 13 of the Arizona Constitution. That provision reads, in pertinent part:

A commission to be known as the commission on salaries for elective state officers is authorized to be established by the legislature. The commission shall be composed of five members appointed from private life, two of whom shall be appointed by the governor and one each by the president of the senate, the speaker of the house of representatives, and the chief justice. At such times as may be directed by the legislature, the commission shall report to the governor with recommendations concerning the rates of pay of elected state officers. . . .

The Legislature established the Commission by enacting A.R.S. §§ 41-1901 to -1904. The Commission's duty, set forth in A.R.S. § 41-~~1903.A~~ has been to "conduct a review of the

1903.A

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rates of pay of elected State officers." In the 1981 legislative session, A.R.S. § 41-1903.A was amended to add "and justices of the peace" to the above-quoted phrase, thereby vesting the Commission with the duty to review those salaries as well. In Hellman v. Marquardt, 111 Ariz. 95, 523 P.2d 792 (1974), the Arizona Supreme Court held that justices of the peace are not state officers. The issue, then, is whether the Legislature may give a constitutionally authorized body a function not provided for in the Constitution.

The constitutionality of a state statute is a matter for judicial resolution and, therefore, the Attorney General generally will not render opinions on this subject. However, we have received a copy of a letter, written to the Chairperson of the Commission from the Chief Justice of the Arizona Supreme Court, in which substantial doubt is cast on the constitutionality of the recent legislation. A copy of that letter is attached for your information. We infer from statements contained in the letter that the Chief Justice has doubts about the validity of the Legislature's ability to expand by statute the jurisdictional powers of a constitutional body.

In response to your first question, then, we think that the Legislature's attempt to assign to the Commission the duty to review salaries of justices of the peace may well be unconstitutional. We suggest that you consider legislative action to deal with the problem. Because of our answer to your first question, your second question, dealing with the implementation of Commission review, is moot.

Sincerely,



BOB CORBIN  
Attorney General

BC:clp

Attachment