

Letter No. 8-97
Elected Official's Salaries

December 5, 1997

XXXX X. XXXXXXXX, Clerk
XXXXXX County
100 XXXXX Street
PO Box XXX
XXXX, Michigan XXXXX

RE: Elected Officials Salaries

Dear Mx. XXXXX:

Thank you for your letter concerning the payment of elected officials' salaries.

Michigan Compiled Laws (MCL) Section 45.401 authorizes the county board of commissioners to establish salaries for the sheriff, under-sheriff and deputy sheriffs and the county clerk, county treasurer and register of deeds and their deputies.

MCL 45.402 requires the sheriff, under-sheriff and deputy sheriffs and the county clerk, county treasurer and register of deeds and their deputies who receive salaries to collect and account for all fees collected by them and deposit those fees with the county treasurer on or before the last day of each month.

MCL 45.403 requires that the salaries be paid monthly, but not until the accounting for and payment of the fees collected are transmitted to the county treasurer. Attorney General's opinion number 0-289 of 1943-44 states that the salaries may be paid semi-monthly.

In *Hawkins v. Voisine* (1940) 290 N.W. 827, 292 Mich. 357, the court determined that an official salary is not made dependent on the amount of work done, but belongs to the office itself without regard to personal service of the officer.

Article 9, Section 18 of the 1963 Michigan Constitution states that "The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution." Note that the Supreme Court in the decision of *Black Marsh Drainage District v. Rowe* (1958) (350 Mich. 470) held that this provision applies to all political subdivisions of the state.

I then offer the following in answer to the questions asked and implied in your letter.

1. When must elected officials salaries be paid?

The statutes cited above anticipate monthly payments to the elected officials after they have accounted for and paid to the county treasurer any fees collected by them. This accounting and payment is to be completed on or before the last day of a month. **The salaries of the listed elected officials must be paid within the calendar year for which the salary is authorized.**

2. How frequently may the salaries be paid?

Although the statutes states monthly, the Attorney General has opined that a semi-monthly payment schedule meets the requirement of the statutory provision provided the accounting for the fees collected is made for the period. **We believe that in a county which has bi-weekly pay periods, that payment schedule would be acceptable provided the accounting for the fees collected is made for the period.**

3. If an elected official leaves office, would that officer be required to return any advanced salary paid to them?

Advance salaries would be prohibited pursuant to the provisions of Article 9, Section 18 of the 1963 Michigan Constitution.

4. If an elected official leaves office prior to the end of the officer's term, how would the salary be prorated?

Since the elected official's salary is based on the expiration of time, the salary proration would be based on the number of days in the year (365 or 366) and the number the number of days the official was in office.

Please contact me at (517) 373-3227 if you have further questions or write our office at: Michigan Department of Treasury, Local Audit and Finance, P.O. Box 30728, Lansing, Michigan 48909-8228.