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OPINION NO. 2016-03

ELKO COUNTY DISTRICT ATTORNEY'S OFFICE; JUSTICE OF THE PEACE SALARIES: NRS 4.040(1) mandates that a board of county commissioners, at its regular July meeting held in the election year for any justice of the peace in its township, fix the minimum compensation for each justice of the peace who will run for office in the upcoming election. During the term that follows the election, the board may increase the compensation of the persons elected to those positions or change the source and payment schedule of their compensation. However, the board may not, during their current term, reduce their compensation below the minimum previously established.

Kristin A. McQueary
Chief Civil Deputy
Elko County District Attorney's Office
540 Court Street, Second Floor
Elko, Nevada 89801-3315

Dear Ms. McQueary:

You have asked whether the Board of Elko County Commissioners ("Board") may, pursuant to NRS 4.040(1), fix the compensation of a new justice of the peace below the amount paid to an existing justice of the peace. Additionally, you have asked whether the compensation of an existing justice of the peace may be reduced prior to the expiration of his or her current term of office.

QUESTION ONE

Under NRS 4.040(1), does the Board's authority to "change" the compensation of a justice of the peace encompass the right to reduce his or her compensation prior to the expiration of his or her current term of office?

SHORT ANSWER

As used in NRS 4.040(1), the word "change" refers to the Board's authority to adjust the source of fixed compensation paid to a justice of the peace ("JP") from a stated salary to fees retained by the JP as provided by law, or to a combination of both. The word "change" in NRS 4.040(1) also means the authority of the Board to adjust the payment schedule of a stated salary, which can be made payable "monthly, semi-monthly, or at regular 2-week intervals" to a JP. As limited by the context of NRS 4.040(1), "change" cannot mean that the Board may reduce the compensation of a JP prior to the expiration of his or her current term.

ANALYSIS

NRS 4.040(1) states:

The several boards of county commissioners of each county, at the regular meeting in July of any year in which an election of justices of the peace is held, shall fix the minimum compensation of the justices of the peace within their respective townships for the ensuing term, either by stated salaries, payable monthly, semimonthly or at regular 2-week intervals, or by fees, as provided by law, or both, and they may thereafter increase or *change* such compensation during the term but shall not reduce it below the *minimum so established*.

NRS 4.040(1) (emphasis added).

Unless limited by the context in which it appears, the word "change" is broadly defined as follows: "to cause to be different; alter." THE AMERICAN HERITAGE DICTIONARY 258 (2nd ed. 1982). In this case, however, the broad meaning of "change" is limited by the context in which the word appears.

NRS 4.040(1) authorizes Boards to fix the minimum compensation of JPs for an upcoming term by one of three options: "stated salaries . . . or by fees, as provided by law, or by both." Further, NRS 4.040(1) identifies three methods by which the Board may fix the payment schedule for the stated salaries, if any, that it has established for

JPs within the township. In this regard, stated salaries may be made “payable monthly, semi-monthly or at regular 2-week intervals.” NRS 4.040(1).

Although NRS 4.040(1) authorizes the Board to increase or change a JP’s compensation during a term, it further states that the Board “shall not reduce it below the minimum [previously] established.” The foundation of statutory construction requires that “[w]hen the language of a statute is plain and unambiguous, [an interpreting body] should give that language its ordinary meaning and not go beyond it.” *Nevada Power Co. v. Pub. Util. Comm’n*, 122 Nev. 821, 837, 138 P.3d 487, 495 (2006). Here, by using the word “change,” but also expressly stating that a JP’s compensation may not be “reduce[d],” the Legislature granted the Board the authority to change the attributes of a previously fixed level of minimum compensation, including attributes such as the source of the compensation and the schedule of payments, but it simultaneously prohibited the Board from reducing the compensation below the amount previously established. See *Op. Nev. Att’y Gen. No. 152* (July 15, 1964).

QUESTION TWO

Insofar as NRS 4.040(1) prohibits the Board from reducing an existing JP’s compensation below the “minimum so established” before that JP’s term, must the Board fix a new JP’s compensation at or above this same threshold? Similarly, does NRS 4.040(1) authorize the Board to compensate a new JP on a part-time basis?

SHORT ANSWER

As used in NRS 4.040(1), the phrase “minimum so established” refers to the amount of compensation established by the Board with respect to any JP whose term of office will commence at the conclusion of the upcoming election. The phrase does not refer to the compensation of a JP who may be elected to a term that will commence at some point thereafter. Accordingly, the Board may fix the minimum compensation for a new JP, serving a staggered term, at a value less than the minimum compensation it previously established for an existing JP. Additionally, nothing in NRS Chapter 4 precludes the Board from fixing the minimum compensation of a new JP to reflect a part-time or half-time case load.

ANALYSIS

The plain language of NRS 4.040(1) contains two separate provisions. The first provision of NRS 4.040(1) states that Boards, “at the regular meeting in July of any year in which an election of justices of the peace is held, *shall fix the minimum compensation of [JPs] within their respective townships for the ensuing term[.]*” NRS 4.040(1) (emphasis added). The use of the word “shall” in the first provision of NRS 4.040(1) mandates that the Board fix the minimum compensation for the upcoming term of a JP at the regular July meeting of any year in which an election of a JP is to be held. This

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mandate does not restrict the Board from fixing the minimum compensation for the upcoming term of a JP above or below the minimum compensation earlier fixed by the Board for a term that commenced previously.

The second provision of NRS 4.040(1) states: “and they may *thereafter increase or change* such compensation *during the term* but shall not reduce it below the minimum so established.” NRS 4.040(1) (emphasis added). The words “and they may thereafter increase or change” contained in the second provision of NRS 4.040(1) reflect the Legislature’s intention to grant Boards the authority to increase or otherwise adjust (without reducing) the compensation of a midterm JP. The second provision of NRS 4.040(1) also contains a limitation that prevents reduction of a midterm JP’s compensation below the amount set by the Board prior to the JP’s election. NRS 4.040(1).

The authority vested in Boards by NRS Chapter 4 to fix the compensation of JPs within their respective townships is exclusive. Article 4, Section 20, of the Nevada Constitution was amended in 1926, to among other things, reserve plenary authority to “[r]egulat[e] the jurisdiction of and duties of justices of the peace and of constables, and [to] fix[] their compensation.” NEV. CONST. art. 4, § 20. NRS 4.040(1) unquestionably grants this reserved plenary authority to fix the compensation of JPs to Boards. Based upon the absence of other limiting language within NRS Chapter 4, the plenary authority of Boards to fix the compensation of JPs includes the authority to pay JPs on either a part-time or full-time basis. NRS 4.040(1).

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:

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