Coates' Canons Blog: Altering Local Elected Officials’ Compensation During the Fiscal Year

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Newly elected (or re-elected) local officials were sworn-in all over the state on Monday night. As the newly constituted boards settle in and prepare to govern, questions typically arise about the extent to which a board may alter its unit’s budget to reflect new priorities and policies (and, perhaps, new economic realities). As I detailed in a previous **post**, generally local governing boards may amend the budget ordinance at any time after its adoption to increase or decrease total appropriations or re-appropriate funds for different purposes. There are a few important limitations, though. As amended, the budget ordinance must continue to be balanced and must adhere to all the requirements set forth in **G.S. 159-13**. And, except under limited circumstances (summarized in the previous **post**), a governing board may not increase or decrease the unit’s property tax rate(s) during the fiscal year.

What if the new board wants to alter its own members’ compensation? If the board is making difficult budget cuts, it may wish to signal that board members are willing to share in the pain. Or board members may be looking for every last dollar to cover revenue short-falls or to support new initiatives. On the flip side, at least under certain circumstances, board members may want to increase their stipends or other compensation to more fully reimburse officials for their time and efforts. Can a board amend the budget ordinance to decrease (or increase) board members’ salaries or stipends?

The answer, at least for county and municipal boards, is no.

G.S. 159-15 states that “[e]xcept as otherwise restricted by law, [a county’s or municipality’s] governing board may amend the budget ordinance at any time after the ordinance’s adoption in any manner . . . .” The statute goes on to delineate the restrictions listed above. But it also is important to note the catch-all limiting language “except as otherwise restricted by law.”

G.S. 153A-28 and **G.S. 153A-92** authorizes a county board of commissioners to fix its own “salaries, allowances, and other compensation . . . ,” but **G.S. 153A-28** specifically provides that county board members’ compensation and allowances be set “by inclusion [in] …and adoption of the budget ordinance.” Similarly, **G.S. 160A-64** provides that a municipal council “may fix its own compensation and the compensation of the mayor and any other elected officers of the city by adoption of the annual budget ordinance . . . .”

These statutory provisions likely constitute exceptions to a governing board’s broad amendment powers in **G.S. 159-15**—prohibiting county and municipal governing boards from altering their own compensation during the fiscal year. In other words, a board of county commissioners or municipal council may not amend its unit’s budget to increase or decrease board members’ compensation after the budget ordinance is adopted.

The North Carolina Attorney General has issued two opinion letters supporting this interpretation of the relevant statutory provisions. In the first opinion letter, issued in 1972, the Attorney General opined on whether a county board could amend the county budget to raise or lower board members’ compensation at any time during the fiscal year. Interpreting former statutory provisions governing board member compensation, the opinion concluded that the statutory language stating that the “compensation and allowances of the chairmen and commissioners may be fixed by the board of publication in and adoption of the annual budget ordinance” confined the commissioners’ authority to fix their compensation to the time required by statute for the publication and adoption of the annual budget ordinance. 42 N.C.A.G. 132 (1972). In 1976, the Attorney General issued a letter opinion construing “**G.S. 160A-64** as placing a restriction on the governing body, to-wit, the compensation can only be fixed by publication in and adoption of the annual budget ordinance, as provided in Chapter 159 of the General Statutes, the Local Government Budget and Fiscal Control Act, which requires the budget to be adopted not later than July 1 of each year." (A copy of each opinion letter is available here.)

There is one exception to this general prohibition on amending the budget ordinance to alter board member compensation—an exception to the exception if you will. A county board of commissioners may appoint the chairman or other member of the board to serve as the county manager on an interim or full-time basis. *See* **G.S. 153A-81; G.S. 153A-84**. If a commissioner agrees to serve in this capacity, his or her compensation and allowances may be increased during the fiscal year to reflect the new duties. **G.S. 153A-28.** Similarly, in municipalities "having a population of less than 5,000 according to the most recent official federal census, the mayor and any member of the council shall be eligible for appointment by the council as department head or other employee, and may receive reasonable compensation for such employment, notwithstanding any other provision of law." **G.S. 160A-158**.

Note also that there is a further statutory restriction on *decreasing* county elected officials' compensation, even if the change is adopted in the annual budget ordinance. **G.S. 153A-92** provides that a county board of commissioners "may not reduce the salary, allowances, or other compensation paid to an officer elected by the people for the duties of his elective office if the reduction is to take effect during the term of office for which the incumbent officers has been elected, unless the officer agrees to the reduction [or unless the Local Government Commission orders a reduction]." This provision likely prohibits a county board of commissioners from decreasing individual commissioner's salaries or stipends during their current term of office, even by majority vote, unless the individual commissioners agree to the reduction.

Municipal council members are not subject to the same restriction. **G.S. 160A-64** states that "the salary of an elected officer *other than a member of the council* may not be reduced during the then-current term of office unless he agrees thereto." (emphasis added). Thus, a municipal board may reduce council members' salaries, if adopted in the annual budget ordinance, without their individual consent. Note that the exception likely does not apply to mayors, though. Recall that **G.S. 160A-64** states that "[t]he council may fix its own compensation and the compensation of the mayor . . ." referencing council members and mayors separately. The provision that exempts the council from reducing the salary of an elected official only exempts "member[s] of the council." It is silent with respect to mayors. It is not entirely clear whether or not the General Assembly intended the reference to members of the council in this context to include mayors. Based on the plain language of the statute, though, it is likely that a municipal board is not authorized to reduce a mayor's compensation during the current mayor's term of office, absent the mayor's express consent.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-13.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-15.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-28.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-92.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-64.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-81.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-84.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-158.html