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Coates' Canons Blog: Determining the Pay for the New Sheriff

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Article: https://canons.sog.unc.edu/determining-the-pay-for-the-new-sheriff/

This entry was posted on January 06, 2015 and is filed under Compensation & Benefits

A new sheriff has been elected. What will his salary be? Must he be paid what the old sheriff was being paid, or can he be paid less?

Here is one way to read the statutes: the new sheriff must be paid at least as much as the old sheriff, unless the county commissioners thought far ahead and took steps way back before the election to lower the salary in the upcoming term.

Here is another way to read the statutes: The new sheriff can be slotted onto the county's salary schedule at an appropriate grade and step just as any other employee coming into a new position would be. The commissioners need take no step ahead of time other than adopting an appropriate salary schedule for all employees.

Which interpretation is correct? Until a court might rule on the matter in a particular case, or the General Assembly might amend the statutes to clarify matters, we cannot know for sure. But in my opinion, the second interpretation is correct: the new sheriff can be slotted appropriately onto the pay schedule.

The basic statute

The basic statute governing compensation of county employees generally is GS 153A-92. It provides that the board of county commissioners "shall fix or approve the schedule of pay, expense allowances, and other compensation of all county officers and employees, whether elected or appointed, and may adopt position classification plans." That is, the commissioners have the authority to set up a pay schedule that includes all employees, included elected officials such as the sheriff. The commissioners have the authority to revise the pay schedule as they deem appropriate, even if that means reductions in salaries of county employees.

With respect to elected officials, however, the statute contains two significant constraints.

First, it provides, in subsection (b)(1), that the commissioners may not reduce the compensation paid to an elected official (such as the sheriff) if the reduction is to take place during the term of office of the elected official. That is, if the commissioners are unhappy with an elected official, they cannot punish that official with a pay cut during the term.

Second, it provides, in subsection (b)(2), that the commissioners may reduce the salary of an elected official for an upcoming term, not for the current term. They can do so if they act far enough ahead of the election for the new term. They must give notice of the intent to lower the salary in the new term at least 14 days before the last day of the period in which candidates for the office file their notice of candidacy—that's in February of the year in which the general election will be in November.

So, if the commissioners think about it nearly a full year ahead, they can set a lower salary for the new term. Maybe old sheriff Jones, who has been in office for 20 years, has gotten salary increases along the way, and now is making $100,000. He is going to retire. Maybe the commissioners believe that whoever is elected to replace him should not be paid that much, since that person will have no experience as sheriff and simply does not merit such a salary. Acting well in advance, they can set a new salary for the new term, and that is what the new sheriff will be paid.

An alternative approach

But do the commissioners really have to think that far ahead? If they fail to, are they really stuck with the old sheriff's high

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salary for whoever is elected, regardless of experience and qualifications? Since the statute does in fact set out a method for changing the salary for the upcoming term, it is arguable that the outcome is that the commissioners are in fact stuck.

But I don't think that is the right outcome.

The statute directs the commissioners to set a "schedule of pay, expense allowances, and other compensation" for all county officers and employees, specifically including elected officials. I think that if the commissioners do set such a schedule and do in fact include the sheriff, then the county can apply that schedule to determine the salary to be paid to the new sheriff without need to go through the way-in-advance salary-change procedure of GS 153A-92(b)(2).

I think that for two reasons.

First, the salary-change procedure applies when the commissioners "reduce the salary, allowances, or other compensation of an officer to be elected at the general election." The process of slotting a newly-elected sheriff on a salary schedule, at a rate lower than the old sheriff was making, is not the equivalent of reducing the compensation "of an officer to be elected at the general election." The compensation to be paid to the officer who will be elected sheriff will be determined according to the salary schedule. There is no "reduction" involved, even if the consequence is that the new sheriff is paid less than the old sheriff.

Second, the statute that governs the filing fee that candidates for sheriff must pay supports this interpretation. That statute is GS 163-107. It provides that for offices generally, including the office of sheriff, the filing fee that a candidate must pay (unless the candidate goes through a written petition process to avoid paying the filing fee) is 1% of the first annual salary to be received by the candidate if elected. It then says this:

The salary of the office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year.

That is, the statute recognizes that an elected office may have a "starting salary," derived from a salary schedule, that is different from the salary being paid to the current office holder.

Complications

The interpretation that says the county is stuck with the higher salary of the old sheriff if the commissioners don't act almost a year ahead has one advantage: it is clear cut and simple. If the commissioners act by the time of the filing period, they can lower the salary for the upcoming term. If they don't, then the new sheriff gets the old salary. Simple.

But simplicity is its only advantage. It does not, in my opinion, serve the interests of the county and the citizens for a newly-elected sheriff with considerably less experience to automatically earn what the old, experienced incumbent was making. The alternative interpretation has the advantage that the salary schedule can be regularly applied to the sheriff as to other employees and the newly elected sheriff can be paid a salary that fairly compensates him in comparison to other employees. And it requires no way-ahead action on the part of the commissioners.

The alternative interpretation does raise a couple of complications, however.

First, who is to determine where the new sheriff is to be placed on the salary schedule? I think this is the answer: whoever normally decides the placement when a new employee comes on board also determines the placement for the new sheriff. If the county human resources director normally makes that decision, then the HR director should make it for the new sheriff. Of course, GS 153A-92(c) says that after the commissioners have adopted a pay plan "the manager is responsible for . . . administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board." So, ultimately, the decision of where to place the new sheriff rests with the county manager. If the HR director normally makes the decision, then I think any employee (including the new sheriff) could appeal to the manager.

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Second, what happens if the newly elected sheriff doesn't agree with the determination? Ultimately, I suppose, he could sue the county.

Third, there is case law in North Carolina indicating that for some purposes employees of the Office of the Sheriff are not regular employees of the county. One 1988 opinion from the court of appeals, for instance, makes the point very bluntly. After acknowledging that the commissioners have the power to set the number of employees that a sheriff may hire and to approve the hiring of relatives, the opinion says this: "In all other aspects, the individual person is an employee of the sheriff, de facto or de jure. Thus, any claim that the County or Board of Commissioners is the employer of [the sheriff office employee] is unsupported by the facts in the case *sub judice.*" *Peele v. Provident Mutual Life Insurance Company*, 90 N.C. App. 447. This language might be read to support the idea that a salary schedule adopted for county employees could not be applied to the sheriff himself. That conclusion is unwarranted, I believe. The *Peele* case involved liability, not compensation, and in other cases courts have held that for other purposes, such as confidentiality of personnel records, employees of the sheriff's office are county employees. Further, the language directly found in GS 153A-92 permits the commissioners to apply pay schedules to elected officials. To me, that makes it clear that the pay schedule may be applied to the elected sheriff.

Register of deeds

This entire discussion applies fully to the office of register of deeds, just as it does to sheriff.

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