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September 9, 2026

OAG 26-05

Subject: When a city changes from the city manager form of government to the mayor-council form, may the city prospectively adjust the mayor's compensation effective on the date the new form of government becomes operative during the term of the sitting mayor where the current salary compensated the mayor under the city manager form where the mayor had no regular administrative duties and the new form vests complete executive authority with full-time administrative duties in the mayor?

Requested by: Frank M. Schultz, City Solicitor
City of Covington

Written by: Christopher L. Thacker, General Counsel¹

Syllabus: The constitutional and statutory provisions that generally prohibit a change in the compensation of a public officer during his term of office must be construed in harmony with well-established case law recognizing that those provisions do not apply mechanistically to situations where new and foreign duties accrue to the officer. The dramatic change in the duties of the office of mayor resulting from the transition from the city manager form to the mayor-council form appears to be such a situation. Moreover, the change in compensation in this instance is a reasonably necessary step to implement the voters' decision to change the form of city government as authorized by statute and is therefore consistent with the public policy underlying the general rule.

¹ The author is grateful to Christina Mays, Law Clerk, Office of Legal Counsel, for her invaluable research, drafting, and substantive contributions to this opinion.

Opinion of the Attorney General

In November 2024 the city of Covington voted to change the organization and government of the city from the city manager plan to the mayor-council plan. Pursuant to the provisions of KRS 83A.160, the change takes effect January 1, 2027.

In his request for this advisory opinion, the City Solicitor states the present mayor's term began January 1, 2025, and expires December 31, 2028, and that the salary for the mayor is currently set at \$34,364.20 annually, which amount was fixed with the part-time mayoral role under the city manager form of government in mind. Because that part-time salary is not commiserate with the full-time executive role that the mayor will assume under the new form of city government on January 1, 2027, the city would like to adjust the compensation for the office of mayor as of that date to account for the new authority and duties that will then accrue to that office.

The question presented on behalf of the city is may the city make such an adjustment to the mayor's salary before the present mayor's term ends in 2028. This question arises in light of two separate constitutional provisions that facially appear to prohibit such a change in salary during the mayor's term.

I. Kentucky courts have upheld additional compensation where new duties are imposed upon an officer which were foreign to the officer's existing office.

Section 161 of the Kentucky Constitution states that “[t]he compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he may have been elected or appointed.” And Section 235 provides that “the salaries of public officers shall not be changed during the terms for which they were elected.”

However, Kentucky courts have long recognized that this constitutional language should not be applied mechanically so as to prohibit mid-term salary changes in every circumstance. For example, under what is sometimes called the “rubber dollar theory” section 161 and 235 do not bar salary increases during a term of office that do no more than maintain the original purchasing power of the compensation. *See Commonwealth v. Hesch*, 395 S.W.2d 362, 363 (Ky. 1965) (holding that a statutory salary increase for local officers “d[id] not violate the purpose of the constitutional provisions prohibiting changing compensation during current terms of office, for on the theory of construction we have adopted, the salaries of the various offices are merely being kept abreast of their initial value or purchasing power.”). *See also Hasty v. Shepherd*, 620 S.W.2d 325, 327 (Ky. App. 1981) (holding that, the language of sections 161 and 235 notwithstanding, magistrates’ “salaries may nevertheless be adjusted during a term of office to provide adequate compensation

which generally adjusts within the changes of the cost of living and the value of the dollar.”).

Perhaps more relevant to the present question is the line of cases holding that in instances where new duties are outside of the regular duties performed in connection with the office at issue, remunerating an official for the foreign duties is not an increase of the salary of his or her office within the meaning of the constitutional prohibition. This principle was first articulated in *James v. Cammack*, 129 S.W. 582 (Ky. 1910). That case involved a statute authorizing regular circuit judges to act as special judges across the state and providing compensation for such appointments. The Court upheld the act, holding that circuit judges were entitled to additional compensation for serving as special judges appointed pursuant to statute to hold court in other parts of the state, finding those duties foreign to the regular duties of a circuit judge. *Id.* at 585.

The Court reaffirmed that principle in *Matthews v. Allen*, 360 S.W.2d 135 (Ky. 1962). *Matthews* arose from the enactment of a statute pursuant to which “Circuit Judges [were] constituted special commissioners of the Court of Appeals and [were] directed to perform such duties as may be required of them by the Court of Appeals.” *Id.* at 136. The statute further provided for additional salary to be paid to the circuit judges to compensate for the additional services they were to provide pursuant to the new law. The Court quickly dismissed any concern with the additional salary arising from the constitutional prohibition on salary increases during a public officer’s term, noting that the Attorney General had “conceded that there was no violation of that constitutional mandate ‘where added compensation within constitutional limits was allowed for the imposition of added duties’” relying on precedent such as *James v. Cammack*. *Matthews* at 139.

While the specific issue arising from a change in the form of city government becoming effective during the term of a sitting mayor has not been addressed by Kentucky courts, the principles underlying these and similar precedents would seem to apply here. As further discussed below, the November 2024 referendum has triggered a statutory change to the office of “mayor” that will result in the mayor assuming many duties that are entirely unrelated to the job of the mayor as it currently exists under the city manager form of government. By statute, the functions and duties of the office of mayor in the mayor-council form of government are fundamentally different from and more numerous than those of the office of the same name in the city manager form of government.

II. The duties of the mayor under the city manager form of government are distinct from those he will have under the mayor-council form.

Under the city manager form of government (governed by KRS 83A.150), the mayor functions primarily in a ceremonial role and presiding officer rather than an executive officer. All legislative and executive authority is vested collectively in the board of commissioners. In this framework, the mayor chairs board meetings and holds a regular vote on all proceedings just like any other commissioner but lacks any veto power. Crucially, the mayor has no regular administrative duties or day-to-day control over city departments; those executive functions are handled collectively by the board or delegated to a professional city manager. Furthermore, the mayor's authority is so tightly bound to the board that his or her temporary successor (mayor pro tem) is chosen by the commissioners, and the board retains the ultimate power to strip the mayor of his title under specific circumstances of prolonged disability.

In stark contrast, KRS 83A.130(3) defines the duties of a mayor under the mayor-council form of government as being that of the chief executive officer of the city. Unlike the city-manager plan where power is shared by a board, here the executive power—running the government and carrying out day-to-day operations—is in the hands of the mayor. Thus, the mayor is responsible for making sure that the laws are obeyed. This includes enforcing the rules of the city government structure itself, local city ordinances, official council orders, and relevant state or federal laws. The mayor oversees all city departments, manages city employees, and has the authority to demand regular performance or operational reports from department heads and serves as the primary representative for the city when dealing with neighboring or overlapping local governments (such as county governments or neighboring cities), especially regarding shared services, joint projects, and contracts between different agencies. Further distinguishing the office under the new form of government from the mayor's role under the current city-manager plan, during council meetings, the mayor may participate, but shall not have a vote, except that he may cast the deciding vote in case of a tie² and possesses veto power.³ Additionally, the mayor will be the only one with the power to delegate his own power or duties to subordinate officers.⁴

The fundamental distribution of executive authority and administrative control diverges sharply between the two forms of government. The mayoral position of these two forms of city government defines two entirely different leadership blueprints. This distinguishes the circumstances in Covington from some historical precedents where Kentucky courts have found salary changes during a term of office

² KRS 83A.130(5).

³ KRS 83A.130(6).

⁴ KRS 83A.130(7) & (10).

improper because these alterations of responsibilities are not merely increases or reductions to the duties of the kind already attendant to the office of mayor.⁵ Administrative duties such as the ones described under the mayor-council form are entirely foreign to the office of mayor as constituted under the city manager form but will now be exclusively vested in the office in the mayor-council form. The substantial transformation of the fundamental powers and obligations of the mayoral office in Covington in essence creates a new office in all but name.

That dramatic transformation of the office, mandated by state law in response to the public vote of the citizens of Covington, distinguishes a salary adjustment in this circumstance from those generally prohibited by the constitution. Moreover, the statutory prohibition on mid-term salary increases found in KRS 83A.070 would not seem to be applicable for many of the same reasons as discussed above. Additionally, that statute must be harmonized with the other provision of KRS Chapter 83A related to the forms of city government and the transition from one to another. Specifically, as discussed below, the statutory mandate for the city to “take action necessary to be in compliance” with the new plan of government in a timely manner found in KRS 83A.160(3) may be understood to mandate changes that would include ensuring that the salary for the office of mayor is consistent with the new full-time nature of the office upon transition.

III. A salary adjustment in this circumstance would not contravene the purpose of section 161 and 235, while giving full effect to the decision of Covington’s voters to change their form of city government.

The underlying purpose of Sections 161 and 235 of the Kentucky Constitution is to (1) protect public officers from legislative interference with their compensation; (2) promote the independence of public officers; (3) provide security against improper pressure; and (4) ensure officers receive the compensation they were entitled to when they took office. *Martin v. Wolfford*, 107 S.W.2d 267 (Ky. 1937), *City of Louisville v. Thomas*, 78 S.W.2d 767 (1935), *Dennis v. Rich*, 434 S.W.2d 632 (Ky. 1968). It is not to make voter-approved municipal reorganization impracticable under KRS 83A.160.

A new salary for the changed position would not infringe on these public policy concerns and is necessary to effectuate a faithful execution of the voters’ decision to reorganize their city government in the manner authorized by KRS 83A.160. Covington’s voters’ desire for a council-mayor form of city government would likely be frustrated by restricting the mayor’s income to the part-time salary of \$34,364.20 while demanding that he function in the full-time executive role required by the new

⁵ See, e.g., *Greenup Cnty. v. Spears*, 81 S.W.2d 905, 907-908 (1935) (holding that where new tasks are closely related to, or building upon, duties that already belong to the office, the official must perform it for their original salary.).

form of city government. After the January 1 transition, Covington’s mayor must implement a complex reorganization of city government, maintain continuity of essential services, coordinate with a newly configured council, manage personnel and budget consequences, and assume other executive and administrative responsibilities. The public interest would not be served by requiring that work be performed at a part-time salary.

For these reasons, it is the opinion of this Office that the city of Covington may by ordinance prospectively adjust the compensation for the office of mayor effective January 1, 2027, provided the adjustment is prospective only, is not based on personal merit or retroactive services, and does not exceed the maximum permitted under KRS 83A.075.

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