
Understanding

Compensation

for Township Officials and Employees



Prepared by the

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Introduction

While some townships have fewer employees and a less complicated organization and structure than others, all township board members are directly involved in compensation issues. Keeping up with changing laws affecting the workplace can be a full-time job for all townships. The job of setting salaries and keeping apprised of changing federal and state laws often falls on the shoulders of the elected township officials. This material was prepared to serve as a guide and to assist township officials with making some of these compensation decisions.

Elected Officials' Salaries

Setting the salaries of township officials is a political issue for elected officials and residents alike. It is also a sensitive issue for employers and employees. Experienced township officials know that laws governing the setting of salaries are not always clear. Quite often, townships are faced with vague and conflicting statutes.

This first section will address the various methods by which salaries may be set in general law and charter townships. Each method has its own procedural requirements and limitations, as well as advantages and disadvantages.

1. Township Board Resolution and Referendum

Michigan law provides that, in townships where the township board has not passed a resolution to hold an annual meeting, the township board may set salaries of township officials by resolution. (MCL 41.95(3)) Attorney General Opinion 6422 of 1987 requires the township board to adopt a separate resolution for each official. Salary resolutions are not required to be adopted annually when the board sets the salaries of the office. A board is only required to adopt a salary resolution when it intends to change the salary. See page 2 for sample salary resolutions where no annual meeting is held.

A township board resolution to increase salaries is subject to referendum if a citizen petition, signed by at least 10 percent of the registered township electors, is filed with the township clerk within 30 days after the township board passes the resolution to increase salaries. If a petition is filed with the township clerk, the township board must call a special election and submit the question to the voters. The salary is paid at the increased rate in the interim.

If the voters approve the resolution, the officer continues to receive the salary increase. If the resolution is not approved, going forward the official's salary reverts to the salary for that office in effect before the township board adopted the resolution. The salary is adjusted as of the date the board of canvassers certifies the election results.

It is important to note the electors' authority to vote is limited to the salary question only. The electors do not have the authority to determine non-taxable fringe benefits or whether the township will participate in a pension plan.

RESOLUTION TO ESTABLISH TOWNSHIP OFFICERS SALARY

This resolution is used when **NO ANNUAL MEETING** is held.

A separate resolution must be adopted for each office (Attorney General Opinion 6422).

WHEREAS, according to MCL 41.95(3), in a township that does not hold an annual meeting, the salary for officers composing the township board shall be determined by the township board; and

WHEREAS, the township board deems that an adjustment in the salary of the office of (*supervisor, clerk, treasurer OR trustee*) is warranted;

THEREFORE BE IT RESOLVED, that as of (*effective date*), the salary of the office of (*supervisor, clerk, treasurer OR trustee*) shall be as follows:

Supervisor: \$_____ salary (not directly performing assessing)
\$_____ salary if properly certified as assessor and directly performing assessing

OR:

Clerk: \$_____ salary

OR:

Treasurer: \$_____ salary

OR:

Trustee: \$_____ (*If paid by salary. Per diem/per meeting compensation is NOT subject to the annual meeting.*)

The foregoing resolution offered by board member _____.

Supported by board member _____.

Upon a roll call vote, the following voted: ___Aye ___No.

The supervisor declared the resolution adopted.

_____, Clerk

NOTE: *This resolution uses **optional two-part salary language** that a board may choose to adopt. If a board does not use the two-part salary format, it should adopt a single, fixed salary per office.*

This resolution assumes that there is no annual meeting. It assumes that there is no salary compensation commission established by MCL 41.95(4).

Pursuant to MCL 41.95(7), a salary resolution cannot result in a reduction of salary during an official's term of office unless the responsibilities and requirements of that office are diminished, and the official agrees in writing to that reduction.

If, within 30 days after the township board votes, a petition signed by 10% of the qualified electors of the township is filed requesting that the question be submitted to the electorate, the township board shall call a special election and submit the question of salary to the electors.

Revised by MTA Staff, September 2016

2. Electors at the Annual Meeting

Public Act 187 of 1988 eliminated the requirement that general law townships hold an annual meeting of the electors. However, if the township board adopts a resolution to hold an annual meeting and has not created a compensation commission, the electors at the annual meeting are authorized to set the salaries of the township supervisor, clerk and treasurer and trustees who are paid by salary (MCL 41.95). If the township compensates trustees on a per diem or per meeting basis, the compensation is established by township board action and is not subject to the annual meeting of the electors' authority.

The electors at the annual meeting are not authorized to set the salaries for any other official or employee of the township. In addition, the electors have no authority to decide fringe benefits for any township official or employee, including board members.

It is the opinion of MTA Legal Counsel that if a township holds an annual meeting, the township is required to pass a salary resolution for each of the four board positions (if the trustee position is paid salary) at least 30 days prior to the date set for the annual meeting. This resolution may provide that salaries remain the same during the ensuing fiscal year or that salaries for some or all officials be increased during the ensuing fiscal year; it may also provide for a reduction in the salaries of board members to commence with the beginning of the next term of office.

The resolution must be adopted by the township board at least 30 days prior to the date set for the annual meeting. The resolution must state the date within the next fiscal year upon which the salaries shall be effective. Sample salary resolutions for townships holding an annual meeting are located on page 5.

The electors at the annual meeting may alter the amount of the salary established by township board resolution. Because state law prohibits reducing an elected official's salary during the official's term of office, the electors may only alter this resolution by approving an alternative salary amount that is equal to or greater than the salary authorized the prior year. If the electors fail to act on the salary resolution, the officers are entitled to the salaries established in the resolution.

Assuming that the compensation established by the electors was properly adopted, the township board does not have the authority to override the electors' decision on compensation made at an annual meeting. For instance, if the electors at the annual meeting determine the salaries of certain board members will be frozen at current levels while the salaries of other officials will be increased, the township board cannot increase the frozen salaries of the board members at a subsequent township board meeting.

The Politics of Public Officials' Salaries

Some township officials have experienced annual meetings where a few township residents routinely reject salary increases proposed in the board's resolution and thus freeze the salaries of township board members or authorize only a small increase. Their reasons may vary. Some residents simply do not want to pay for higher salaries; others may bear a political or personal grudge against township board members. In addition, the average

township resident may have little knowledge as to the elected officials' duties. Consequently, the citizens may have no reason to support any proposed salary increase. This may be particularly true when little explanation is offered as to why salary increases were requested in the first place.

How can a township board gain the support of the electors for salary increases? Admittedly, there is little a township board can do to change the minds of those electors who vote down salary increases on principle. However, many citizens are willing to listen to sound reasons as to why a salary increase is reasonable.

Educating township residents before the township board's salary resolution is altered by the electors at the annual meeting goes a long way toward gaining the electors' support. Township residents should be informed about the duties of each township official, the time involved in carrying out the duties of the office, including after-hours commitments, the overall township operations, salaries of other officials in similar townships, any major and minor achievements of the township board during the past year and the history of salary increases (or lack thereof) for township officials. You may think of other items to add to the list.

Information about township board accomplishments can be made available at the township hall and annual meeting. If the township has a regular newsletter circulated to township residents that contains information about township events, information about township achievements and challenges can also be included. However, the township official must walk a fine line between informing township residents and crusading for a higher salary through the township newsletter.

RESOLUTION TO ESTABLISH TOWNSHIP OFFICERS SALARY

This resolution is used when **HOLDING AN ANNUAL MEETING**.

A separate resolution must be adopted for each office (Attorney General Opinion 6422).

WHEREAS, MCL 41.95 authorizes the township board of _____ Township to determine the salaries for the offices of supervisor, clerk, treasurer, and trustee for fiscal year _____ by adopting a resolution at least 30 days prior to the township annual meeting of the electors; and

WHEREAS, the township board deems that an adjustment in the salary of the office of (*supervisor, clerk, treasurer OR trustee*) is warranted;

THEREFORE BE IT RESOLVED, that as of (*effective date in next fiscal year*), the salary of the office of (*supervisor, clerk, treasurer OR trustee*) shall be as follows:

Supervisor: \$ _____ salary (not directly performing assessing)
\$ _____ salary if properly certified as assessor and directly performing assessing

OR:

Clerk: \$ _____ salary

OR:

Treasurer: \$ _____ salary

OR:

Trustee: \$ _____ (*If paid by salary. Per diem/per meeting compensation is NOT subject to the annual meeting.*)

BE IT ALSO RESOLVED, that this resolution shall be submitted to the electors at the annual meeting to be held on _____, at which time the electors may modify these amounts. Pursuant to MCL 41.95(7), such modification(s) that may be made by the electors cannot result in a reduction of salary during an official's term of office unless the responsibilities and requirements of that office are diminished, and the official agrees in writing to that reduction. In the event that the electors fail to act on this resolution, the officer shall be entitled to the salary as established in this resolution, in accordance with state law.

BE IT FURTHER RESOLVED, that this resolution, adopted on _____, is properly adopted by _____ Township Board at least 30 days prior to the annual meeting, as required by law.

The foregoing resolution offered by board member _____.

Supported by board member _____.

Upon a roll call vote, the following voted: ___Aye ___No.

The supervisor declared the resolution adopted.

_____, Clerk

NOTE: This resolution uses **optional two-part salary language** that a board may choose to adopt. If a board does not use the two-part salary format, it should adopt a single, fixed salary per office.

This resolution assumes that there is no salary compensation commission established by MCL 41.95(4).

Pursuant to MCL 41.95(7), such modification(s) that may be made by the electors cannot result in a reduction of salary during an official's term of office unless the responsibilities and requirements of that office are diminished, and the official agrees in writing to that reduction.

Revised by MTA Staff, September 2016

3. Salary Compensation Commission

Establishing a compensation commission to set the salaries of elected officials is another option available to charter and general law townships. (MCLs 41.95 and 42.6a) If a compensation commission is created, neither the township board nor the electors at the annual meeting determine the salaries of any elected officials, although the township board can determine any per diem or per meeting compensation.

Establishing a Salary Compensation Commission

In both charter and general law townships, a township board intending to create a compensation commission must do so by adopting an ordinance by resolution and determining the date for convening the commission. Township citizens have 60 days following the effective date of the ordinance to file a petition for referendum on establishing the commission with the township clerk containing signatures of at least 5 percent of the township's registered electors.

If a petition is filed, an election must be called in accordance with Michigan general election laws. If there is no general election to be held within the time normally required for notices and registration, the township board must call a special election on the question. When a petition is filed with the township clerk, determinations made by the commission are not effective until the township's electorate votes to approve the ordinance establishing the commission at an election.

For a general law township, the law does not specify that a compensation commission may be abolished, but under the "equal dignity doctrine," MTA Legal Counsel advise that the argument may be made that a township could follow the same procedures to adopt an ordinance repealing the ordinance that created the commission, including the potential for referendum.

The Charter Township Act provides that the procedure for establishing compensation may be changed by ordinance after one year following the effective date of the initial ordinance. (MCL 42.6a) MTA has interpreted this statute to mean that the township's procedures, outlined in its ordinance creating the commission, may be modified, or the commission can be abolished by township board ordinance, but only after one year, and also subject to referendum.

Commission Membership

In both charter and general law townships, a compensation commission is comprised of five township electors, chosen by the supervisor and confirmed by a majority of the township board. Each term of office is for five years, except for the first appointed members. Each of these members serve one, two, three, four and five years, respectively, and must be appointed within 30 days after the effective date of the township ordinance establishing the commission.

After the commission is established in a general law township, members must be appointed within 30 days after a term expires or a vacancy occurs. In a charter township, compensation commission members must be appointed prior to October 1 of the year of the appointment.

An officer or employees of a governmental agency or unit and immediate family members of an officer or employee shall not be appointed to the commission (MCLs 41.95 and 42.6a). MTA interprets this provision broadly to exclude any person connected with any other governmental unit or agency, as well as those connected with the township. Immediate family members include spouse, father, mother, children, grandparents and grandchildren. If there any doubts about an individual becoming a member of the commission due to a possible conflict of interest, MTA recommends the membership issue be resolved against the person serving as a member.

Authority

The key to an effective compensation commission is to include in the compensation commission ordinance such items as the procedural rules to be followed, as well as the limitations and authorities of the commission, or to require the commission itself to establish these rules. Procedural rules should address the meeting times and locations, what constitutes a quorum (a majority of the total membership), what records and/or testimony will be reviewed in making a decision, whether or not the commission will follow *Robert's Rules of Order* or other parliamentary procedures, the requirement that any meeting will comply with the Open Meetings Act and any other matters concerning procedure.

Meeting Schedule

Since a compensation commission can meet no more than 15 days a year and only during odd-numbered years, the commission's determinations should cover a two-year period. MTA recommends the ordinance specify whether the commission is authorized to decide whether incremental increases will be authorized at various times during the two-year period.

The compensation commission can only determine the salaries of the elective offices and not per diem compensation. If certain elected officials will be compensated on a per diem basis, MTA legal counsel recommends the ordinance specify the commission's authority does not extend to elected officials who are paid on a per diem or per meeting basis.

Determination of Salary Compensation Commission / Effective Date

The commission is required to make its salary determinations within 45 days of its first meeting, and its determinations are effective 30 days after they are filed with the township clerk. This provision does not necessarily mean the salaries are effective on that 30-day date; the salaries are effective at the beginning of the next fiscal year.

State law provides the decision is final 30 days after it has been filed with the township clerk unless two-thirds of the township board (four on a five-member board or five on a seven-member board) rejects the salary determination. If the township board rejects a determination, the salary of that office remains the same.

The township board is not required to accept the commission's determinations as a package. The board could choose to reject one or more recommendation or reject all of the determinations. A two-thirds vote of the township board is required to reject any or all of the commission's determinations. Any determination not rejected by the township board stands as determined by the commission.

There are advantages and disadvantages to instituting a formal compensation commission. Proposed salary increases may be politically acceptable to township residents since the commission is comprised of unaffected township taxpayers. In addition, the fact that individuals are appointed to the commission on a staggered basis offers continuity in the decision-making process.

On the other hand, a township board is limited to accepting or rejecting the recommendations of the compensation commission. If the board rejects the commission's proposals, the board members continue to receive the current salary. There is no authority for the electors or the township board to take any other action to increase salaries. In deciding whether or not to establish a compensation commission, the board should recognize that commission members bring with them their own biases and prejudices in terms of functions they feel are most important for the success of the township. There are no guarantees that salaries established by a compensation commission will be any more just or equitable than salaries determined by the electors or by the board itself.

However, careful selection of residents who are recognized for fairness and are also not politically aligned will generally result in salaries the entire community can accept. Compensation commission members should be oriented to the duties of each township officer, including time spent serving the public. If commission members do not have an overall understanding of township operations, the commission may be ineffective. Since a compensation commission meets every two years, there may be a lack of flexibility and immediacy in salary decisions.

Board Member Compensation Issues

Separating the Supervisor/Assessor Salary

Why do many townships split the salary of the township supervisor for assessing and non-assessing duties?

If certified as an assessor at the proper level for the township, the supervisor has the statutory duty of assessor. If not properly certified, the supervisor is the chief assessing officer, but does not assess. MTA recommends separating the salary received by the supervisor for assessing and non-assessing duties for purposes of economy and efficiency. This kind of compensation arrangement gives townships the necessary authority and flexibility to regulate the salary of the supervisor who subsequently may not perform assessing duties.

The language of the split salary resolution can be similar to the following:

"BE IT RESOLVED, that as of (effective date), the salary of the supervisor shall be as follows:

\$ _____ base salary (not currently certified as assessor at proper level)

\$ _____ salary if currently certified as assessor at proper level."

The split salary establishes a higher level of compensation for a supervisor who performs assessing duties and a lower level of compensation for a supervisor who does not assess.

Should there be a mid-term change, either in the office of supervisor or in the supervisor's certification, the proper salary rate can be paid.

Without such a split salary, a supervisor whose salary level was based on his or her certification as an assessor—and who subsequently is no longer properly certified—cannot have his or her salary adjusted down to recognize the reduced workload unless the supervisor agrees to the reduction in writing.

Townships wishing to establish two separate salaries for performing the supervisor's non-assessing and assessing duties should not simply designate a specific amount to be paid to the supervisor and another to be paid to whomever does the assessing. The attorney general has determined that a township supervisor cannot receive additional compensation that is not included in the salary resolution for that office for performing assessing duties (Attorney General Opinion 6083 of 1982).

Township officials should be aware that action to split the salary must be made prior to the beginning of the term of office. Otherwise, it is inappropriate for a township to establish a supervisor's salary and subsequently attempt to decrease that salary because the official does not qualify to perform assessing duties. Without the prior adoption of the split salary resolution, it would be illegal to decrease the salary of the office of supervisor during that official's term of office, unless the supervisor consents to the reduction in writing.

If the salary is split, it is still considered one salary for the purpose of salary increases, according to MTA legal counsel. It is illegal for an official to receive two separate salaries for performing the functions of his or her office.

Decreases in Salary

State law provides that the salary of an elected official cannot be decreased during the official's term of office, unless the duties of the office have been diminished and the official consents in writing to the reduction. However, the salary of a township board member could be reduced beginning with the next term of office.

Paying Trustees

Trustees in either a general law or charter township may draw both salary and per diem or per meeting compensation for performing statutorily related duties.

For general law townships, MCL 41.95(2) states, "A trustee may receive, in addition to the annual salary for his or her service to the township, a sum for each meeting of the board actually attended by the trustee, as established by the township board, to be paid upon authorization of the township board. The supervisor, clerk and treasurer shall receive no additional compensation for attending meetings of the township board."

The Charter Township Act states, "A trustee may receive, in addition to other emoluments provided by law for his service to the township, a sum per meeting of the board actually attended by him, as established by the township board to be paid upon authorization of the board" (MCL 42.6). MTA interprets this provision to allow a trustee of a charter township to be paid on a per meeting basis for attending township board meetings in addition to a base annual salary when authorized by the township board.

It should be noted that the Charter Township Act specifically directs that a township supervisor, clerk and treasurer cannot receive any additional compensation for attending township board meetings (MCL 42.6).

The township board could choose to limit the number of meetings per day for which a trustee could be compensated. This policy should be established prior to the trustee attending any meetings, however.

Per Diem vs. Per Meeting Compensation

Occasionally, confusion arises regarding the use of per diem and per meeting compensation when determining compensation to be paid for attending township meetings. Per meeting compensation is simply compensating an official for the number of meetings attended.

The attorney general has advised that the definition of per diem is compensation to be paid for a day (Attorney General Opinion 5273 of 1978). Pursuant to that opinion, it is inappropriate to compensate a township official more than one per diem per day for attending township meetings. However, MTA believes that an official could receive one or more per meeting compensations per day for attending one or more township meetings. The township board can limit the number of meetings per day for which an official could be compensated. The policy should be instituted prior to an official attending the meetings.

Board Member Compensation for Other Meetings

For general law townships, MCL 41.95(2) states, "The supervisor, clerk and treasurer shall receive no additional compensation for attending meetings of the township board."

The Charter Township Act specifically directs that a township supervisor, clerk and treasurer cannot receive any additional compensation for attending township board meetings (MCL 42.6).

However, a township official may be paid a per diem or per meeting compensation by the board, in addition to receiving a base annual salary, for attending meetings that are not meetings of the township board, with prior approval. For example, a township board member who has been asked by the board to attend road commission meetings may be paid for those meetings and also draw his or her regular salary as an official.

Board Member Compensation for Additional (Non-Statutory) Duties Michigan law allows township boards to assign additional, non-statutory duties to elected township officials and to authorize payment for those services as the township board deems reasonable (MCL 41.96).

In *Burton Township v Speck*, (1 Mich App 339, 1965; affirmed 378 Mich 213, 1966), the Michigan Court of Appeals determined that state law vests wide latitude in township boards to decide not only what services are compensable but also to determine the amount of compensation.

Before an official can be compensated for performing any non-statutory related duties, the township board must review the additional duties of the official. MTA attorneys strongly

suggest that any additional duties taken on by board members be explicitly authorized by board action only after the board has determined that no incompatibility of offices exists.

A Note on Additional Duties and Incompatible Offices

Note that townships with a population of 40,000 or more cannot assign additional duties to a township board member that would constitute an incompatible office or a contract with the township. Townships under 40,000 in population may assign additional duties that would otherwise constitute an incompatible office or a contract with the township, subject to one exception.

The Incompatible Public Offices Act, Public Act 566 of 1978 (MCL 15.181, *et seq*), states that a public officer shall not hold two or more incompatible offices at the same time. (MCL 15.182) "Incompatible offices" are public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in: (1) the subordination of one public officer to another; (2) the supervision of one public office by another; or (3) a breach of duty of public office. (MCL 15.181(b)) Since the township board is the employer, any employment position with the township would result in that position being subordinate to and under the supervision of the township board.

The Contracts of Public Servants with Public Entities Act, PA 317 of 1968 (MCL 15.321, *et seq*), prohibits, among other things, a public servant from being a party, directly or indirectly, to any contract between himself or herself and the public entity of which he or she is an officer. (MCL 15.322(1)).

However, the Contracts of Public Servants Act and the Incompatible Public Offices Act both go on to create exceptions to allow a township board member to be assigned an additional duty that would otherwise not be allowed under those acts.

In a township with a population of less than 40,000, the township board may authorize a township official to perform other additional services for the township such as emergency medical services personnel or part-time or on-call firefighter. However, a township official may not serve as a person who negotiates with the township on behalf of the firefighters.

A township board is never required to give a board member additional duties, and many township boards feel it is inappropriate to do so. However, some townships with small populations have a limited pool of candidates who are qualified, available and willing to serve the township as on-call firefighters, EMTs or in other township positions. The statutory exceptions were enacted to help remedy that situation.

Compensating Non-Elected Officials and Employees

Fortunately for township officials, state law is neither as explicit nor as confusing regarding compensation for non-elected officials and employees. Note that all of the following (deputies, members of statutory or advisory boards and commissions, and employees) are considered employees in the context of paying wages and reporting and withholding appropriate payroll taxes.

Compensating Deputies

State law provides that each township supervisor may appoint a deputy supervisor, and each township clerk and treasurer is required to appoint a deputy clerk and deputy treasurer, respectively, to assist them in carrying out the duties of their offices.

The township board is authorized to determine whether the compensation of the deputy supervisor, deputy clerk or deputy treasurer will be paid by salary or by some other method, as well as the level of compensation. As employees of the township, deputies are paid from the general fund of the township, not by the officer who appointed the deputy.

The manner of compensating deputies varies from township to township, as some deputies are full-time employees or may hold other jobs with the township, while other deputies hold the title but perform few regular duties. A deputy position is not subject to the Fair Labor Standards Act or minimum wage. If a person who is a deputy also holds an employment position with the township unrelated to deputy statutory duties, then that position is likely subject to the FLSA and minimum wage.

Compensating Non-Elected Officials

Compensation for members of statutory township boards and commissions, such as a planning commission, zoning board, zoning board of appeals, board of review, or fire/police administrative board, etc., is guided by the statute that authorizes the specific board or commission.

For example, the Michigan Planning Enabling Act states, "Members of a planning commission may be compensated for their services as provided by the legislative body." (MCL 125.3823)

The Michigan Zoning Enabling Act states, "A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties." (MCL 125.3601)

Township boards should refer to the authorizing statute for any board or commission before establishing compensation for that body.

Advisory committees or bodies established by the township board (not by statute) may be compensated as determined by the township board.

Compensating Employees

As a general rule, compensation for employees is determined solely by the township board. Because employee compensation can often comprise 60 to 80 percent of the budget, salary determinations should be a major focus in budget development.

Salaries and wages in smaller townships are often reviewed annually on a case-by-case basis. In larger townships with many employees, the board may adopt a compensation system that incorporates a salary range for different job classifications. Under such a merit system, the board does not decide individual salaries, but adjusts the overall compensation levels for changes in the prevailing wages paid in the labor market for similar positions. A merit system attempts to also maintain salary equity among township employees as well.

A philosophical argument often arises over salaries: Should the board attempt to pay employees the lowest wages possible, in order to keep personnel costs at a minimum, or should the board attempt to keep employee compensation equitable with the labor market? This issue has no right answer, but townships do need to balance economy with the costs incurred from turnover, lower morale, the possibility of union representation, and an inability to attract and retain good employees.

Modern personnel administration places great importance on establishing compensation levels that are equitable with the labor market (what other employers pay employees with similar positions) and that maintain “internal equity” among the various township offices. Internal equity means that positions within the township that require similar training, education and place similar demands on employees are paid similar wages. And, where positions in the township have differing requirements and demands, the compensation differential between those positions commensurately reflects the difference in job requirements.

Job requirement factors that are often considered in establishing compensation include:

- education and work experience necessary to perform the job,
- interpersonal and communication skills,
- written communication skills,
- supervisory or managerial responsibility,
- job complexity,
- impact on township programs, services and operations,
- demands for mental concentration,
- physical demands, and
- adverse working environment.

Payment of Wages

How often must a township official or employee be paid? Is it permissible to pay an official or employee once a year, twice a year or some other frequency?

There is a great deal of misunderstanding surrounding the frequency of payment for township officials as well as township employees. Many townships pay their cemetery sexton, volunteer firefighters and other individuals on a biannual or annual basis. Many employers may not realize that the timing of employee payments are governed by at least two statutes:

The **Workforce Opportunity Wage Act**, Public Act 138 of 2014, MCL 408.411, et seq., governs the Michigan minimum wage and overtime. Because the Michigan minimum wage is currently higher than the federal minimum wage, PAs 390 of 1978 and 138 of 2014 apply instead of the FLSA.

Elective offices and deputies (for statutory deputy duties) are not subject to minimum wage and overtime rules.

The **Payment of Wages and Fringe Benefits Act**, Public Act 390 of 1978, MCL 408.471, et seq., governs the payment of wages for all employers in Michigan. This act regulates the time and manner of payment of wages and fringe benefits to employees, requires certain recordkeeping procedures and prescribes penalties and remedies for non-compliance.

- An employer who has established a regularly scheduled weekly or bi-weekly payday is in compliance if wages are paid to the employee on the established regularly recurring payday, and the payday occurs within 15 days after the work period ends.
- An employer who has established a monthly payday will be in compliance provided that the employee receives payment on or before the first day of each calendar month of all wages earned during the preceding calendar month.
- An employer may pay wages to employees more often than required but not less than at least once a month

Elected officials and independent contractors are not covered by PA 390. Appointed officials and employees of the township are covered by the act, however. The LARA will rely upon the rulings of the U.S. Department of Labor when questions arise regarding the status of individuals as bona fide independent contractors, volunteers and employees of the township.

Is it illegal to pay officials or employees in advance?

Yes, it is illegal to pay employees or officials in advance of completion of their duties. MCL 750.490 directs that it is illegal to loan monies to anyone or to any organization from public funds. Since an official or employee has not yet earned the money, paying in advance would be considered a loan.

Can a township board authorize retroactive payment of salary for services already rendered?

It is illegal to authorize retroactive payment of salary to **elected officials, other public officers, agents or contractors** of a township.

It is **not** illegal to retroactively pay **employees**.

The 1963 Constitution, Article 11, Section 3, says, “Neither the Legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into.”

But, according to Attorney General Opinions 4818 of 1974 and 6329 of 1985, the 1908 Constitution specifically added the word “employee” in that section. Then the Constitutional Convention of 1961 specifically removed the word “employee” with the intention of removing employees from the prohibition on “the gratuitous grant of further compensation to contractors, agents and officers of the government after the fact.” (2 Official Record, Constitutional Convention 1961, p. 2493.)

Also according to Attorney General Opinion 4818 of 1974, the attorney general has determined there is no “extra compensation” within the meaning of Section 3 where an increase in compensation is paid prospectively and not retroactively, pursuant to agreement. An incremental salary contract for a public official, entered into prior to the performance of the services and providing for additional compensation at set intervals during the contractual period, is valid.

It should be noted that under MCL 141.431, a provision is made for recovery of public monies that are found to be illegally expended: “The attorney general or the prosecuting attorney shall institute civil action in any court of competent jurisdiction for the recovery of any public monies, disclosed by any examination to have been illegally expended.” (Attorney General Opinion 6329 of 1985).