

# Setting Compensation for Elected Officials

January 2012

Catherine Mullhaupt  
MTA Member Information Director

# 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 **salary resolution**. (MCL 41.95(3))
- ▶ Attorney General Opinion 6422 of 1987 requires the township board to adopt a separate resolution for each official.

# 1. Township Board Resolution and Referendum

- ▶ 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.

# 1. Township Board Resolution and Referendum

- ▶ 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.

# 1. Township Board Resolution and Referendum

- ▶ If the voters approve the resolution, the officer receives the salary increase.
- ▶ If the resolution is not approved, 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.

## 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—or the voters reestablished the annual meeting by ballot question—then 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).

## 2. Electors at the Annual Meeting

- ▶ 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 annual meeting 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.

## 2. Electors at the Annual Meeting

- ▶ 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.
- ▶ The resolutions may provide that salaries remain the same during the ensuing fiscal year or that salaries for some or all offices be increased during the ensuing fiscal year.
- ▶ The resolutions may also provide for a reduction in the salaries of board members to commence with the beginning of the next term of office.

## 2. Electors at the Annual Meeting

- ▶ The resolutions must be adopted by the township board at least 30 days prior to the date set for the annual meeting.
- ▶ The resolutions must state the date within the next fiscal year upon which the salaries shall be effective.

## 2. Electors at the Annual Meeting

- ▶ 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.

### 3. Salary Compensation Commission

- ▶ Establishing a compensation commission to set the salaries of elected officials is another option available to both 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.

# 3. 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 electors 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.

# 3. Salary Compensation Commission

- ▶ 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.

# 3. Salary Compensation Commission

- ▶ **Membership:** 5 township electors, chosen by the supervisor and confirmed by a majority of the township board. Must be appointed within 30 days after the effective date of the ordinance.
- ▶ Officers or employees of the township, and immediate family members of an officer or employee cannot be appointed.
- ▶ MTA Legal Counsel recommend interpreting this provision broadly to exclude any person connected with any other governmental unit or agency, as well as the township. Immediate family members include spouse, father, mother, children, grandparents and grandchildren.

# 3. Salary Compensation Commission

- ▶ **Term of office:** 5 years (except the first appointments of a new commission are staggered).
- ▶ Members must be appointed within 30 days after a term expires or a vacancy occurs.
- ▶ In a charter township, members must be appointed prior to October 1 of the year of the appointment.

# 3. Salary Compensation Commission

- ▶ **Functions:** Meets up to 15 days per year, only during odd-numbered years. So the commission's determinations should cover a 2-year period.
- ▶ **MTA recommends that 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 commission's authority does not extend to per diem/per meeting compensation or to other benefits or reimbursement rates.

# 3. Salary Compensation Commission

- ▶ **Functions:** The commission must make its salary determinations within 45 days of its first meeting—UNLESS two-thirds of the township board votes to reject them. If that happens, the salaries do not change.
- ▶ A township board could choose to accept one or more recommendations and reject others. A simple majority vote is sufficient to accept; the 2/3 vote is required to reject any or all recommendations.
- ▶ Determinations are effective 30 days after they are filed with the township clerk—BUT salaries are not effective until the beginning of the next fiscal year.

# Issues to Consider

- ▶ **Decreases in salary:**
- ▶ State law states 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.
- ▶ But a salary may be reduced, without those requirements, beginning with the next term of office.

# Issues to Consider

- ▶ **Trustee pay:**
- ▶ Trustees may be paid by salary, OR by per diem/per meeting stipend (“meeting pay”), OR both. (MCLs 41.95 and 42.6)
  - “Per diem” = Paid once for the day (*no matter how many meetings*) (Attorney General Opinion 5273 of 1978)
  - “Per meeting” = Paid for each separate meeting (*even if multiple meetings on one day*)
- ▶ Note that a township supervisor, clerk or treasurer cannot be paid additional compensation to attend township board meetings.

# Issues to Consider

- ▶ **Board Member Compensation for Other Meetings:**
- ▶ Township board members may be paid to attend meetings that are not township board meetings, IF the township board has authorized such pay.
  - Township board member on PC or ZBA (or other statutory body) → You must be paid what the other members are paid, if they are paid.
  - Township committees → You may (NOT must) be paid, according to township board policy.
  - Attending meetings that you don't serve on (observing county commission, road commission, etc.) → You may (NOT must) be paid, according to township board policy.

# Issues to Consider

- ▶ **Board Member Compensation for Additional, NON-Statutory Duties:**
- ▶ Michigan law allows township boards to assign additional, non-statutory duties to township board members and to authorize payment for those services, as the township board deems reasonable. ([MCL 41.96](#))

# Additional, Non-Statutory Duties

- ▶ The Incompatible Public Offices Act, Public Act 566 of 1978 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 that, when the official is performing the duties of any of the public offices held by the official, result 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)) [i.e., conflict of interest]
- ▶ 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.

# Additional, Non-Statutory Duties

- ▶ 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))

# Additional, Non-Statutory Duties

- ▶ But Public Act 9 of 1992 amended the Contracts of Public Servants with Public Entities Act, and PA 10 of 1992 amended the Incompatible Public Offices Act so that, in a township with a population of less than 25,000, the township board MAY authorize a township official to:
  - Perform additional services for the township *that would otherwise be incompatible*
  - Serve in an emergency medical services position
  - Serve as a part-time or on-call firefighter who is not:
    - 1) the fire chief (*unless the township has a population of less than 3,000; PA 196 of 2011*),
    - 2) a full-time firefighter, or
    - 3) a person who negotiates with the township on behalf of the firefighters.

# Additional, Non-Statutory Duties

- ▶ Note that townships with a population of 25,000 or more—there are 31 as of the 2010 Census—cannot assign to a township board member additional duties that would result in an incompatible office, which includes any employment position, even the positions of emergency medical services personnel or firefighter.

# Additional, Non-Statutory Duties

- ▶ 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. PAs 9 and 10 were enacted to help remedy that situation.

# Additional, Non-Statutory Duties

- ▶ 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 Legal Counsel 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.