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Honorable Jerry Don Kimbrough
Franklin County Tax Assessor
P. O. Box 417
Russellville, AL 35653

Tax Collectors - Tax Assessors - Salaries

Once a county has approved a resolution under Act 82-620 placing the county tax assessor and tax collector on a salary, a subsequent attempt to rescind the resolution is ineffective, since Amendment No. 92 prohibits a change in a county official's compensation during his term of office, and since Act 82-620 is in effect a "local option statute," once a county has chosen to come under the statute, it no longer has the option of declining the provisions of the statute.

Dear Mr. Kimbrough:

Reference is made to your letter of December 8, 1982, in which you state that the Franklin County Commission adopted a resolution on September 30, 1982 authorizing the placing of the tax assessor and tax collector of Franklin County on a salary and removing them from the fee system. The Commission, on November 8, 1982, passed another resolution rescinding the authorizing resolution passed on September 30, 1982. You ask the following questions:

1. What constitutes the adoption of a resolution?
2. Under the guidelines of Act 82-620 once the resolution has been adopted, can it be rescinded?
3. Under the guidelines of Act 82-620, are the Franklin County Tax Assessor and Tax Collector on salary?

It would appear from what you have told me that the original resolution, passed on September 30, 1982, by the Franklin County Commission, was properly passed. You have stated that a quorum was present, that a majority voted for the resolution and that the resolution was properly recorded in the minutes of the meeting of September 30, 1982. Based on these facts, the resolution was properly adopted.

Act No. 82-620 established a system whereby tax assessors and tax collectors in the various counties could be placed on salaries as opposed to the fee system. That act provided that each county would have the option of whether the tax assessor and tax collector in that county would be placed on salary. If a county wished to place its tax assessor and tax collector on a salary in accordance with the Act, the county governing body was to pass a resolution authorizing such action. The Act was to become effective "on October 1, immediately following the adoption and ratification of a constitutional amendment authorizing the implementation of this act, or on the first day of the next term of office of the officials affected herein, whichever first occurs." The constitutional amendment referred to in the statute is Amendment Number 411, approved by the electorate on September 7, 1982. Under the provisions of that amendment, the Legislature can alter the method of paying county tax assessors and tax collectors by placing them on a salary, as opposed to a fee system, provided that:

following the effective date of any general law passed pursuant to this constitutional amendment, the legislature may not thereafter either increase or decrease the salaries of such officials during any term for which such officials have been elected or appointed, and in the case of such officials who were converted from a fee basis to a salary basis of compensation, the legislature may not decrease the salaries of such officials during any term for which such officials have been elected or appointed or may be thereafter re-elected or re-appointed.

Constitution of Alabama of 1901, Amendment No. 411, Section 1. In other words, although Amendment No. 92, the so-called "Boutwell Amendment", would prohibit any increase or decrease of the compensation a county official receives during the term for which he is elected or appointed, Amendment No. 411 provides an exception to Amendment No. 92 whereby, the tax assessor, tax collectors, license commissioner, revenue commissioner and other officials charged with the assessing and collecting of ad valorem taxes in the various counties may be placed on a salary, even though they were formerly on a fee system, during their current term of office. This exception to Amendment 92 is limited to placing these officials on a salary, and for all other purposes Amendment No. 92 would remain in effect, preventing any change in the compensation of county officials during their terms of office. Therefore, the Franklin County Commission's attempted rescission of its resolution authorizing the placing of the tax assessor and tax collector on a salary would be ineffective, as it is constitutionally infirm.

Furthermore, an attempt by the Franklin County Commission to rescind the resolution effective at the beginning of the next term of the county tax

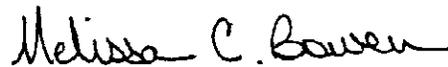
assessor and tax collector would also be ineffective. In the case of State v. Justice, 200 Ala. 483, 76 So. 425 (1917), a similar situation was presented. In that case, the Legislature had created the position of County Health Officer, and given each county the option as to whether there should be a County Health Officer in the particular county. The office was set up by the Legislature, and each county merely voted on a resolution approving the office in the particular county. When Elmore County sought to rescind its resolution approving a County Health Officer in Elmore County, the Court held that the statute was in effect a "local option statute", and once the county approved the option it came under the statute. Any subsequent attempt to rescind the resolution would be ineffective. The instant statute, Act No. 82-620, would also seem to be a "local option statute." Once a county has chosen to come under the statute, the statute goes into effect, and the county no longer has the option of declining the provisions of the statute. Otherwise, the county tax assessor and tax collector and other officials covered by the statute would be at the mercy of the Commission as to how their compensation would be handled, a result sought to be avoided by Amendment No. 92.

For these reasons, the attempted rescission, or any subsequent attempted rescission, of the resolution passed by the Franklin County Commission placing the tax assessor and tax collector on a salary is ineffective. Consequently, the Franklin County Tax Assessor and Tax Collector are to be compensated by salaries, rather than by the fee system.

I trust the above is sufficient to answer your questions.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



MELISSA C. BOWEN
Assistant Attorney General

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