

# MAINE STATE LEGISLATURE

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RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATTERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

80-20

January 31, 1980

Honorable Howard M. Trotzky  
20 Knox Street  
Bangor, Maine 04401

Dear Senator Trotzky:

This is in response to your letter dated January 9, 1980 concerning the salaries of county officials. In your letter you ask whether the Legislature can reduce the salaries of County Commissioners and Treasurers during their terms in office and, if so, what procedure must be used by the Legislature to reduce the salaries.

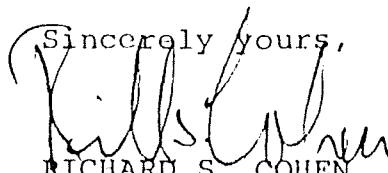
The Legislature has authority to change the salaries of incumbent County Commissioners and Treasurers, unless to do so would impair contractual obligations in violation of the State and Federal Constitutions. M.R.S.A. Const. Art. I, § 11, Const. U.S. Art. I, § 10, ch. 1. Bowman v. Maine State Employees Appeals Board (Dec. No. 2201, December 4, 1979). Title 30 M.R.S.A. § 2, which sets the salaries of county officials, does not create or authorize creation of a contract between county officials and a governmental body. In cases where a statute merely fixes salaries, the Legislature may amend, or repeal and replace, the law and thereby alter the compensation of the official or employee. Dodge v. Board of Education, 302 U.S. 74, 78-79 (1937). Consequently, the Legislature may amend Title 30 M.R.S.A. § 2 to decrease the salaries of incumbent Commissioners and Treasurers of any county.

We should add that an amendment decreasing the salary of incumbents during their terms in office can only apply prospectively. This is because both the State and Federal Constitutions prohibit the taking of property without due process of law. M.R.S.A. Const. Art. I, pt. 1, § 1;

Const. U.S. Amend. 14. The salaries authorized by Title 30 M.R.S.A. § 2 become the property of incumbent county officials when the officials earn them by performing their official duties. A statute which would reduce the salaries earned by county officials prior to the effective date of the statute would deprive county officials of their property without due process of law. Salley v. McCoy, 189 S.E. 196 (S.C. 1936). Consequently, any amendment to Title 30 M.R.S.A. § 2 decreasing the compensation of incumbents should apply to salaries to be earned in the unexpired portion of the incumbent's term.

If you wish, this office would be willing to review proposed legislation on this subject. Please feel free to contact me if I can be of any further service.

Sincerely yours,



RICHARD S. COHEN  
Attorney General

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