

## Changing Elected Officials' Compensation

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According to Section 1001 (e) of the Borough Code compensation for council is set by ordinance and is based on the decennial census. The amounts are as follows:

- In boroughs less than 5,000 a maximum of \$1,875 per year;
- In boroughs with a population of 5,000 or more but less than 10,000, a maximum of \$2,500 per year;
- In boroughs with a population of 10,000 or more but less than 15,000, a maximum of \$3,250 per year;
- In boroughs with a population of 15,000 or more but less than 25,000, a maximum of **\$4,125**;
- In boroughs with a population of 25,000 or more but less than 35,000, a maximum of \$4,375 per year; and,
- In boroughs with a population of 35,000 or more, a maximum of \$5,000 per year.

The salaries “shall be paid monthly or quarterly” according to Section 1001(e) of the above provisions. One question often raised is whether a council member who is still in office, but not attending meetings should be paid? The answer is yes, the compensation continues because he did not resign from the office and there is no statutory authority to withhold compensation.

The president of council is authorized to earn as much as the mayor however cannot exceed the mayor's compensation. That is why the issue of whether a council member can vote for himself for president requires a consultation with the borough solicitor.

Article III, Section 27 of the PA Constitution-Changes in Term of Office or Salary Prohibited states “no law shall extend the term of any public officer or increase or diminish his salary or emoluments, after his election or appointment.” This provision prohibits changing compensation mid-term, so if there are council members who are half-way through their term, they are not eligible for the increase in compensation until after they have been re-elected, however council members who win at the municipal election would be eligible once they take the oath of office in January of the even-numbered year. And the remaining council members' compensation would be increased after they have won another term.

The mayor's compensation is also set by ordinance and in accordance with section 10A04 (a) (1)-(4) of the Borough Code and is also based on the latest decennial census.

- In a borough with a population of less than 5,000, a maximum of \$2,500 per year;

- In a borough with a population of 5,000 or more but less than 10,000, a maximum of \$5,000 per year;
- In a borough with a population of 10,000 or more but less than 15,000, a maximum of \$7,500 per year;
- In a borough with a population in excess of 15,000 a maximum of \$500 per year per 1,000 residents or fraction of 1,000, the population to be determined by the latest official census figures.

The effective date of the increase would be the year after the mayor's office goes on the ballot for a full four year term in accordance with the PA Constitution.

The three common questions that PSAB receives are as follows: can a council member or a mayor waive his compensation? Can he donate his compensation to the volunteer fire company or library?

PSAB does not provide legal opinions, however, a waiver is still a change in compensation which is prohibited by the PA Constitution and the action to donate the compensation could be construed as an Ethics violation because an incumbent could use this tool for political purposes (i.e., elect me because I don't accept compensation).

Moreover, we believe that this waiver or donation could be seen as a way to evade paying both state and federal income taxes. We are aware that some members who have just retired cannot exceed a certain income or they will be required to pay back to Social Security.

### **The Elected Tax Collector's Compensation**

Unlike the council and mayor's compensation which is set forth in the Borough Code, the Local Tax Collection Law [72 PS 5511.36 (a)] establishes the compensation for the tax collector and the commission is 5 percent maximum. Some boroughs pay a lower commission percentage plus so much per tax duplicate handled. It is at the discretion of the council.

Council must enact any changes in the tax collector's compensation by ordinance no later than February 15, of the year when the four year term goes on the ballot and at no other time. This too, complies with Article III, section 27 of the PA Constitution.

If the elected tax collector is also appointed to collect the Act 511 taxes, then the tax collector becomes an appointed official for that portion of her duties. Council can set the amount of pay at any time for those duties.

One caveat, if the council sets the compensation for the elected tax collector so unreasonably low, the tax collector can challenge it. The PA State Supreme Court ruled that taxing districts in Bucks County had violated the law in establishing such a low rate (\$.70) per bill as to discourage any candidate from running for office in the county in *Telly et al v. Pennridge School District Bd. Of Sch. Dirs.*, 53 A. 3d. 2012.

The provision about “emoluments” in Article III, Section 27, which is applicable, is best explained by a Commonwealth Court ruling. It held that rent-free office space provided by a school district was an emolument. There is no statutory mandate to provide the elected tax collector with an office in boroughs or in this particular case a township treasurer (equivalent of the borough’s tax collector). In *Knight v. Elizabeth Forward School District*, 764 A.2d 108, the Court ruled that a township treasurer who had received 23 years’ worth of rent-free office space in the school district building had violated the emolument under the PA Constitution and it could be withdrawn without passage of an ordinance or resolution.”

Refer any legal questions to your borough solicitor.