

02-099

EDUCATION: SCHOOL BOARDS; SELECTION, QUALIFICATION & SALARIES

Authority for Chesapeake School Board, based on population count, to increase annual salary of its members to maximum paid to city council members, and annual salary of its chairman to maximum paid to city mayor, upon passage of motion in 2003 approving specific salaries of \$25,000 and \$27,000, respectively. July 1, 2004, is earliest date that such salary increases may be effective.

The Honorable Harry B. Blevins
Member, Senate of Virginia
November 15, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You pose several questions regarding the salaries that may be paid pursuant to § 22.1-32 to the elected members of the City of Chesapeake School Board, and the procedures for effectuating such salaries. You inquire concerning the maximum annual salary that the Chesapeake School Board may pay its members and ask whether the school board may pay its members and its chairman the same annual salary as that paid to city council members and the mayor, respectively. You inquire also as to the procedures the Chesapeake School Board must take and the time frame within which the board must act to adopt a salary increase. Finally, you inquire as to the earliest date a salary increase may occur.

Response

It is my opinion that § 22.1-32 authorizes the Chesapeake School Board, based on population count, to increase the annual salary of its members to the maximum paid to city council members, and the annual salary of its chairman to the maximum paid to the city mayor, upon passage of a motion in the year 2003 approving the specific salaries of \$25,000 and \$27,000, respectively. July 1, 2004, is the earliest date that such salary increases may be effective.

Facts

You relate that members of the Chesapeake School Board are elected for four-year terms. Elections are staggered every two years. Five members were elected in May 2002, and the remaining four members will be elected or reelected in May 2004. Prior to December 31, 2001, the Chesapeake School Board adopted a resolution to petition the General Assembly to increase the limit on salaries of school board members. I note that the 2002 Session of the General Assembly passed, and the Governor signed, three bills amending § 22.1-32, which governs elected school board members' salaries. The first increases the annual salary limits for Chesapeake School Board members from \$5,000 to \$10,000.¹ The second deletes the authorized salary limits for various named localities, including Chesapeake, and permits elected school boards to pay members the same salary as that paid their local governments.² The third increases the annual salary level for specific school boards; however, the Chesapeake School Board is not one of the affected school boards.³ At the direction of the Virginia Code Commission, the provision set forth in the Code deletes the authorized salary limits for various named localities, including Chesapeake, and permits elected school boards to "pay each of its members an annual salary that is consistent with the salary procedures and no more than the salary limits provided for local governments in Article 1.1 ... of Chapter 14 of Title 15.2 or as provided by charter."⁴

You further relate that the Chesapeake School Board has not voted to increase member salaries in any amount. You also relate that the population of the City of Chesapeake is between 175,000 and 259,999.

Applicable Law and Discussion

Section 22.1-32 provides:

A. Any elected school board may pay each of its members an annual salary that is consistent with the salary procedures and no more than the salary limits provided for local governments in Article 1.1 (§ 15.2-1414.1 et seq.) of Chapter 14 of Title 15.2 or as provided by charter.

....

D. Any school board may, in its discretion, pay the chairman of the school board an additional salary not exceeding \$2,000 per year upon passage of an

appropriate resolution by (i) the school board whose membership is elected in whole or in part

....

F. No ... elected school board shall be awarded a salary increase, unless, upon an affirmative vote by such school board, a specific salary increase shall be approved. Local school boards shall adopt such increases according to the following procedures:

....

2. A local school board representing a city or town may establish a salary increase prior to December 31 in any year preceding a year in which members are to be elected or appointed. Such increase shall become effective on July 1 of the year in which the election or appointment occurs.

No salary increase may become effective during an incumbent member's term of office; however, this restriction shall not apply if the school board members are elected or appointed for staggered terms.

Section 22.1-32(A) authorizes elected school boards to refer to §§ 15.2-1414.1 through 15.2-1414.7 for guidance in setting the salaries for their members. Section 15.2-1414.6 provides, in part, that cities with a population between 175,000 and 259,999 "shall be allowed to set [annual] salaries for mayors, which include presidents of council, and council members not to exceed" \$27,000 and \$25,000, respectively. Section 15.2-1414.6 further provides that "[n]o increase in the salary of a member of council shall take effect until July 1 after the next regularly scheduled general election of council members."

According to the reported population for the City of Chesapeake, the city fits within the bracket that would allow school board members and the school board chairman to be paid an annual salary not to exceed \$25,000 and \$27,000, respectively. These amounts are authorized salary limits and are not required salaries. Nothing in either § 22.1-32 or § 15.2-1414.6 requires that the indicated salaries must be paid. Further, nothing in either statute establishes a minimum salary level.

You next inquire concerning the procedures the Chesapeake School Board must take to adopt a salary increase for its members. Section 22.1-32(F)(2) provides that a city school board "may establish a salary increase prior to December 31 in any year preceding a year in which members are to be elected or appointed," and that "[s]uch increase shall become effective on July 1 of the year in which the election ... occurs." For an elected school board, this means that § 22.1-32(F) still requires the school board to approve, upon an affirmative vote, a specific salary increase. Procedurally, the Chesapeake School Board must pass a motion to increase its annual salary to a particular salary figure. The 2002 amendments to § 22.1-32 do not delete or alter the statutory language governing the timing for an elected school board to increase its annual salary. Further, the provisions of § 22.1-32 governing the timing for elected school board member salary increases are consistent with the provisions in § 15.2-1414.6, governing the effective date for increases in city council member salaries. As such, § 22.1-32 continues to govern the timing for elected school board members' salary increases.

Finally, you inquire concerning the earliest time that a salary increase may occur. The motion to increase the salary may occur no sooner than January 1, 2003. The year 2003 is the next year preceding the year in which members are to be elected or appointed. The earliest possible effective date for a salary increase would be July 1, 2004, because that is the July 1 date within the year in which the election occurs.

Conclusion

It is my opinion that § 22.1-32 authorizes the Chesapeake School Board, based on population count, to increase the annual salary of its members to the maximum paid to city council members, and the annual salary of its chairman to the maximum paid to the city mayor, upon passage of a motion in the year 2003 approving the specific salaries of \$25,000 and \$27,000, respectively. July 1, 2004, is the earliest date that such salary increases may be effective.

¹See 2002 Va. Acts ch. 669, at 963, 964-65 (amending § 22.1-32(B) to increase salary limits for Chesapeake School Board from \$5,000 to \$10,000, and salaries for school boards in Fredericksburg and Newport News in varying amounts).

²See 2002 Va. Acts ch. 733, at 1088, 1088-91 (adding subsection A to § 22.1-32, providing that elected school boards may pay each member annual salary consistent with salary procedures and limits set for local governments in §§ 15.2-1414.1 to 15.2-1414.7, or as provided by charter; redesignating subsections A to D as B to E; increasing, in subsection D, salary limit appointed or elected school board may pay its chairman from \$1,100 to \$2,000; and adding, in subsection F,

that salary increase must be approved by affirmative vote of *elected* school board). The 2002 legislation eliminated the specific salary limits previously provided for most elected school boards; however, for appointed school boards the specific salary limits were retained. *Compare id.* (§ 22.1-32(B)-(C)), *with* § 22.1-32(A)-(B) (Michie Repl. Vol. 2000).

³See 2002 Va. Acts ch. 739, at 1097, 1099 (amending § 22.1-32(B), in which salary limit for school board members was increased only for Newport News).

⁴Va. Code Ann. § 22.1-32(A) (Michie Supp. 2002); *see also* ch. 733, *supra* note , at 1088.

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