

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-1121
	:	
of	:	<u>February 26, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Anthony S. Da Vigo	:	
Deputy Attorney General	:	
	:	

SUBJECT: SALARY INCREASES—The board of supervisors of a county may, by ordinance, increase the salaries for justice court judges and constables, notwithstanding the provision of the county charter that no increase in compensation of elected county officials shall become operative without approval of a majority vote of the voters of the county at a statewide general election.

The Honorable William R. Leonard, Assemblyman, Sixty-Seventh District, has requested an opinion on the following question:

May the board of supervisors of a county, by ordinance, increase the salaries for justice court judges and constables, where the county charter provides that no increase in compensation of elected county officials, including those whose compensation is determined by the board of supervisors, shall become operative without approval of a majority vote of the voters of the county at a statewide general election?

CONCLUSION

The board of supervisors of a county may, by ordinance, increase the salaries for justice court judges and constables, notwithstanding the provision of the county charter that no increase in compensation of elected county officials, including those whose compensation is determined by the board of supervisors, shall become operative without approval of a majority vote of the voters of the county at a statewide general election.

ANALYSIS

The present inquiry is whether the board of supervisors of a county may, by ordinance, increase the salaries for justice court judges and constables, where the county charter provides that no increase in compensation of elected county officials, including those whose compensation is determined by the board of supervisors, shall become operative without approval of a majority vote of the voters of the county at a statewide general election.

California Constitution, article VI, section 5 provides in pertinent part:

“The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.”

The use of the term “provide” with respect to each justice court, rather than “prescribe,” indicates an intention to permit the Legislature to delegate the designated duties. (*County of Madera v. Superior Court* (1974) 39 Cal. App. 3d 665, 669–670.) The Legislature has delegated such duties: Government Code section 71600 provides:

“The board of supervisors shall regulate the compensation of the judges and constables of justice courts, and prescribe the number, qualifications, and compensation of such clerks, deputies, and other attaches of justice courts as public convenience requires, notwithstanding the provisions of any charter. In any chartered county all such matters shall be regulated in the manner, if any, set forth in the charter with respect to township officers and employees, but the board of supervisors may increase the salary of any constable or judge of a justice court to compensate for increase of duties or living costs, notwithstanding the provisions of any charter.”

This legislative delegation of authority to the county board of supervisors is constitutionally authorized.

California Constitution, article VI, section 5 deals specifically with the compensation of justice court judges, officers, and employees, and governs over the general provisions of article XI, section 4 of the Constitution pertaining to county charters and over any provision of a county charter to the extent of inconsistency. (*Cf.* 30 Ops. Cal. Atty. Gen. 11 (1957); 5 Ops. Cal. Atty. Gen. 186, 187–188 (1945).)

A provision of a county charter precluding an increase in compensation without approval of the voters would, to the extent of its application to justice court judges and constables,¹ be manifestly inconsistent with the constitution, and with section 71600 of the Government Code providing for the regulation of such matters by the board of supervisors as distinguished from the voters. (*County Medera v. Board of Supervisors* (1976) 57 Cal. App. 3d 341, 343–344.)

It is concluded that the board of supervisors of a county may, by ordinance, increase the salaries for justice court judges and constables, notwithstanding the provision of the county charter that no increase in compensation of elected county officials, including those whose compensation is determined by the board of supervisors, shall become operative without approval of a majority vote of the voters of the county at a statewide general election.

¹ We assume, without deciding, that the charter provision, by its terms, is applicable to justice court judges and constables.