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OPINION	:	No. 79-507
	:	
of	:	<u>July 11, 1979</u>
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SUBJECT: COUNTY SUPERINTENDENT OF SCHOOLS—This opinion deals with the power and timing of salary reductions for this position and the proper filing fees required to become a candidate for the position.

The Honorable Gilbert W. Boyne, County Counsel, County of Stanislaus, has requested an opinion on the following questions:

1. Does a county board of education have the power to reduce the salary of the county superintendent of schools after the election for the term for which the superintendent was elected?

2. Must the county board of education fix the salary of the county superintendent of schools prior to the time of determining the filing fee for filing nominating papers for the elective position of superintendent?

3. Is the county required to return the difference in filing fees to the candidates, if the filing fee for the position of county superintendent of schools was based on the salary in effect at the time for filing nominating papers, but was reduced after the election?

CONCLUSIONS

1. The county board of education has the power to decrease the salary of a county superintendent of schools after the election for the term for which the superintendent was elected.
2. A county board of education is not required to fix the salary of a county superintendent of schools prior to the time of determining the filing fee for filing nominating papers for the elective position of superintendent.
3. A county is not required to return a difference in filing fees if the salary upon which the filing fee for the position of county board of education was based is reduced after the election.

ANALYSIS

The present County Superintendent of Schools of Stanislaus County was elected at the general election in November 1978, and took office in January 1979. At the time of filing nominating papers for the election for that office, as well as at the time of both the primary elections in June 1978, and the general election in November, the salary for that office, as fixed by the County Board of Education, was \$41,000. The filing fees required of candidates for that position were based on that salary of \$41,000. Prior to the person elected taking office in January 1979, the County Board of Education reduced that salary to \$32,000. The questions presented relate to the power and timing of such a salary reduction and to the proper filing fees required to become a candidate for the position.

The Superintendent of Schools for Stanislaus County is elected at each gubernatorial election. (Cal. Const., art. IX, § 3.) The Constitution as amended in 1976 clearly authorizes each county board of education to fix the salary of the county superintendent of schools:

“Notwithstanding any provision of this Constitution to the contrary, the county board of education or joint county board of education, as the case may be, shall fix the salary of the county superintendent of schools or the joint county superintendent of schools, respectively.” (Cal. Const., art. IX, § 3.1(b).)

The California courts have consistently held that a public employee has no vested or constitutional right in public employment or in any particular measure of compensation. *Butterworth v. Boyd* (1938) 12 Cal. 2d 140, 150; *Gilbaugh v. Bautzer* (1970) 3 Cal. App. 3d 793; *Kacsur v. Board of Trustees* (1941) 18 Cal. 2d 586, 591; *O’Neal v. City etc. of San Francisco* (1969) 272 Cal. App. 2d 869, 874–875; *Hollon v. Pierce* (1967) 257 Cal. App.

2d 468, 478; *Gilmore v. Personnel Board* (1958) 161 Cal. App. 2d 439, 448–449; see also *Pranger v. Break* (1960) 186 Cal. App. 2d 551, 556, 557; *Norton v. City of Santa Ana* (1971) 15 Cal. App. 3d 419, 425; *Payne v. State Personnel Board* (1958) 162 Cal. App. 2d 679, 681–682; *Blake v. State Personnel Board* (1972) 25 Cal. App. 3d 541, 552.

Any property interests there may be in public employment are not created by the Constitution. Rather, they are derived and *their dimensions are defined* by existing rules or understandings that stem from an independent source, *i.e.*, statute or regulation. *Skelly v. State Personnel Bd.* (1975) 15 Cal. 3d 194, 207; *Board of Regents v. Roth* (1972) 408 U.S. 564, 569–570, 577; *Perry v. Sindermann* (1972) 408 U.S. 593, 599.

In 61 Ops. Cal. Atty. Gen. 384 (1978), this office discussed the power of the Stanislaus County Board of Education to reduce the salary of the County Superintendent of Schools, as was done in August 1977. We concluded that section 3(b) of article IX of the Constitution gave plenary power to the county board to “fix” salaries and “. . . the authority both to increase and to decrease compensation is therefore implicit.” (61 Ops. Cal. Atty. Gen. at 386.) We also concluded that the adoption of section 3(b) of article IX voided the provision of Education Code section 1207 stating “. . . the salary of an incumbent (county superintendent of schools) shall not be reduced during the term for which he was elected or appointed or for any consecutive new term to which he is elected or appointed.” Barring a constitutional prohibition¹ against increasing or decreasing (or both) the salary of an officer during that officer’s term, the power to fix salaries of officers is plenary whether vested in the Legislature or some other body. (See *Woodcock v. Dick* (1950) 36 Cal. 2d 146; *Fidler v. Board of Trustees* (1931) 112 Cal. App. 296; and see *Crockett v. Mathews* (1910) 157 Cal. 153, 157; Annot. (1924) 31 A.L.R. 1316; (1933) 86 A.L.R. 1263.) We reiterate our conclusion in 61 Ops. Cal. Atty. Gen. 384 that the Stanislaus County Board of Education has the power to increase or decrease the salary of the County Superintendent of Schools.

Once having concluded that a particular body or agency has the power to fix salaries, it follows that, barring a constitutional or statutory prohibition, the timing of a change in such salaries is vested in that body or agency. Thus, it would appear that if a county board of education may increase or decrease a salary of the county superintendent of schools during that superintendent’s elected term it could do so immediately prior to the commencement of that term. This should be contrasted with the situation where a constitutional provision, statute or charter validly prohibits changing the compensation of elected officers, or requires that compensation be fixed prior to the election of such officer.

¹ The only prohibitions against increasing or decreasing compensation of officers currently contained in the Constitution relate to state elected constitutional officers (Cal. Const., art. § 12; art. III, § 4) and to members of the Legislature (Cal. Const., art. IV, § 4).

(See *Pulcifer v. County of Alameda* (1946) 29 Cal. 2d 258, 261 (county charter provisions); and see 34 Ops. Cal. Atty. Gen. 322 (1959) discussing statutory prohibition (Gov. Code, § 36517 since amended) prohibiting increasing or decreasing compensation of certain city officers after their election or during their terms of office.) There are, of course, no such restrictions on the constitutional power of county boards of education fixing the salary of the county superintendent of schools. We conclude, therefore, that such boards may select the time² and frequency of changing the salary of such officers, irrespective of whether the incumbent is elected or appointed. Likewise, the county board of education is under no duty to set such a salary before the election. This opinion only addresses the power of the board to fix and change the superintendent's salary, not with the wisdom of the manner in which it is exercised.

The final question deals with the effect, if any, of a change in the salary of a county superintendent of schools on the filing fee required of candidates for that office. It is our conclusion that the filing fee for that office is to be determined by the county clerk based on the salary in effect at the time nominating papers may first be filed for the office, and if the salary is later reduced, there is no provision for any pro rata refund of such filing fees.

The county superintendent of schools is a county officer for purposes of election procedures (Elec. Code, § 33; Gov. Code, § 24000), and the office is nonpartisan (Cal. Const., art. II, § VI; Elec. Code § 37). The election is governed by the laws applicable to direct primaries. (Elec. Code, § 6400 *et seq.*) A candidate for the office must file a declaration of candidacy and nominating papers with the county clerk not less than 88 and not more than 113 days prior to the direct primary. (Elec. Code, § 6490.) Thus, the first day for filing for that office will be in February of years in which a governor is elected in this state.

The filing fee for candidates for county superintendent of schools is prescribed by Elections Code section 6554(d) to be two percent "of the annual salary of the office." The statute is silent as to the date to be used to determine the applicable salary for the office in computing the filing fee. In our opinion, in light of the ability of the county board of education to change the salary at any time, as concluded above, the salary for the office on the first day a declaration of candidacy may be filed should be used by the County Clerk to compute the filing fee for all candidates for the office.³ In the instance of the election of

² We did conclude in 61 Ops. Cal. Atty. Gen. 384, 388 that the county board had no power to decrease the superintendent's salary retroactively and thus deprive the superintendent of matured contractual rights for past services rendered.

³ We consider in this opinion only the office of county superintendent of schools or other county elective office the salary for which may be changed at any time. We express no opinion on what salary should be selected as a base for determining a filing fee by the county clerk or Secretary

Stanislaus County Superintendent of Schools, we understand the county clerk selected the salary in effect at the time nominating papers first could be filed (\$41,000). We conclude that this was proper.

The Elections Code makes no provision for refund of filing fees for any reason, once paid. In 57 Ops. Cal. Atty. Gen. 635 (1974), we concluded that candidates for election in the June 1974 primary election were entitled to a refund of filing fees if the candidates had paid under protest and filed a proper claim for refund. In that election, however, the Supreme Court had declared unconstitutional the then existing filing fee system which provided for no viable alternative to the payment of filing fees. (*Donovan v. Brown* (1974) 11 Cal. 3d 571; *Knoll v. Davidson* (1974) 12 Cal. 3d 335.)⁴

We are constrained not to expand the scope of that opinion to provide, without legislative authorization, for a refund system when the basis for the calculation of a particular fee might change after initially being set. This is particularly so here, where the change did not occur until after the general election. The filing fee, of course, only applies to the primary election. (Elec. Code § 6554.) To allow a retroactive adjustment in the filing fee, whenever the salary is changed up or down would leave open the final fee for an office such as county superintendent of schools, where the salary might be changed at any time, to the end of the term for which election is sought. The legislature has not authorized any such system. We therefore conclude that the county is not required to return any portion of the filing fee for an office the salary for which is reduced after the date for first filing nominating papers for that office.

of State for an office, statewide or local, the salary for which may not, pursuant to the Constitution, statute or charter, be changed during the term of office for which the election is being held and that salary is known at the time for filing of declarations of candidacy.

⁴ Subsequently, an alternative system to filing fees was enacted. (Elec. Code, § 6555 added Stats. 1974, ch. 454, § 1.)