

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

July 14, 2008

The Honorable President and  
Members of the Baltimore  
City Council  
c/o Karen Randle, Executive Secretary  
409 City Hall  
Baltimore, MD 21202

REVISED

RE: City Council Bill 08-0143 – Charter Amendment-City Solicitor-  
Public Works Director-Compensation

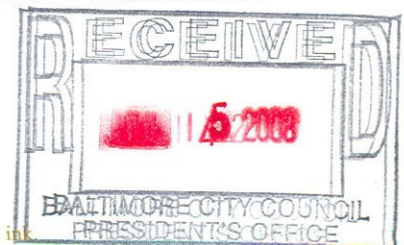
Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 08-0143. City Council Bill 143 proposes an amendment to the Baltimore City Charter that would add the City Solicitor and the Director of Public Works to the officials whose compensation is set by the Compensation Commission procedures found in Article VII, Sec. 117 et seq. of the Baltimore City Charter.

Article III, Section 35 of the Maryland Constitution states that the salary or compensation of any public officer may not be increased or diminished during his term of office ..... However,  
...

the salary or compensation for any appointed public officer of the Mayor and City Council of Baltimore may be increased or diminished at any time during his term of office, except that as to officers in the Classified City Service, when the salary of any appointed public officer of the Mayor and City Council of Baltimore, however, increased or decreased, it may not again be increased or decreased, as the case may be, during the term of such public officer.”

The requirements of Section 35 are reflected in the wording of the Baltimore City Charter, Article VI, Sec. 10 which provides that the Mayor and City Council may increase or decrease the compensation of municipal officers and appointed municipal officers who serve on the Board of Estimates by ordinance but once increased or decreased may not increased or decreased the compensation again during those officers’ terms.



The Compensation Commission currently sets the salaries for elected officials, largely to deal with the difficulties encountered when trying to fairly set the salaries of elected officials under the constraints of Article III, Section 35 of the Maryland Constitution which prohibits increasing or decreasing the salaries of public officials of Baltimore City during their terms of office. Article VII, Sections 28(c) and 23(c) of the Charter currently provide that the salaries of the City Solicitor and Director of Public Works shall be set in the Ordinance of Estimates. Unlike the officials covered by the Compensation Commission, the City Solicitor and the Director of Public Works are not elected officials. They are appointed by the Mayor and confirmed by the City Council. Article III, Sec. 35 of the Maryland Constitution clearly states that the compensation of any appointed public officer may be increased or decreased during their term of office but once increased or decreased may not be increased or decreased again during the term.

The Compensation Commission meets beginning October 1 of the second year preceding the mayoral general election and makes its recommendations by October 1, of the year preceding the mayoral general election. If the Commission sets the compensation at the beginning of the term of the City Solicitor and Director of DPW, under Sec. 35, each would be entitled to one increase during their terms. The Compensation Commission, however, is not set up to provide for that increase. It only meets to provide for the compensation for the next term of the elected officials, whose compensation can not be increased during their terms of office. This effectively deprives the City Solicitor and the Director of DPW of their right under the Maryland Constitution to one increase or decrease in compensation during their term and would be in violation of Article III, Sec. 35 of the Maryland Constitution.

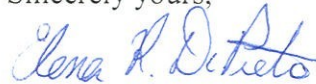
The opportunity to provide for an increase during the terms of appointed City officials serves an important purpose by providing the City with flexibility to offer additional compensation to an official who comes into office mid-term, thereby giving the City the ability to attract highly qualified professionals to lead City departments. The ability to negotiate salaries for these officials is vital to attracting the best individuals possible for the positions.

Article III, Section 35 states that the salary or compensation for any appointed public officer of the Mayor and City Council of Baltimore may be increased or diminished at any time during his term of office and once increased or decreased may not be increased or decreased again during the term. The Maryland Constitution used the word "may" which is generally interpreted as a permissive not mandatory term. Permissive constitutional language is usually treated as intended to be merely permissive unless from the context the purpose plainly appears to be mandatory. 16 Am. Jur.2d., Constitutional Law Sec. 97. If, however, "the object of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large, that is where the public interest or a private right requires that the thing be done then the language, though permissive in form is peremptory." Id.

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It is difficult to determine in this case whether the intent of the wording of Section 35 was permissive or mandatory but the use of shall in the preceding language on Section 35 would tend to indicate that the permissive interpretation was intended. Therefore, although City Council Bill 08-0143 does not violate Article III, Sec. 35 of the Maryland Constitution by preventing the compensation of the City Solicitor and the Director of Public Works from being increased or decreased once during their terms as provided for in Article III, Section 35, the Law Department is concerned that the bill will make it difficult to attract highly qualified individuals to these very important positions and would eliminate the ability to negotiate compensation for those positions. The Law Department approves the City Council Bill 08-0143 for form and legal sufficiency but advises the City Council to seriously consider the impact of this Charter change on the City's ability to attract professionals of the highest caliber to public service.

Sincerely yours,



Elena R. DiPietro  
Assistant Solicitor

cc: Honorable Helen Holton  
Angela Gibson, City Council Liaison  
George A. Nilson, City Solicitor  
Linda C. Barclay, Chief Solicitor  
Deepa Bhattacharyya, Assistant Solicitor  
Ashlea Brown, Assistant Solicitor