

1973 WL 27756 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 15, 1973

*1 General Hugh P. Harris, U.S.A., Ret.
Chairman
Legislative Pay Committee
Route 1
Box 774
Bonneau, South Carolina 29431

Dear General Harris:

Thank you for your letter of recent date inquiring as follows:

‘—whether the General Assembly in proper circumstances could delegate authority to fix its compensation to our Committee.’

It is my opinion that the authority to establish compensation of the members of the General Assembly cannot be delegated by the General Assembly under any circumstances. The line between delegable and non-delegable functions is many times difficult of ascertainment, as indicated by authorities cited below. On the matter of legislative compensation, however, there is notdoubt in my mind that this is a non-delegable power, in that its exercise would constitute the attempted delegation of a legislative power, tantamount to the authority to make a law, and the authorities are unanimous in the conclusion that such powers cannot be delegated. In my opinion, your committee may be vested, by joint resolution or otherwise, with authority to study the problem of proper compensation for legislative members and to report thereon to the General Assembly, but the General Assembly cannot make such report by your committee an act of law effective to fix the compensation of its members. Instead, such report can only be considered in the nature of information upon which the General Assembly may act in its discretion by duly enacted legislative provisions, including the required several readings in each branch of the Legislature, and such consideration is necessary in order for effective legislative action to be taken. In short, the authority of the Legislature to fix the compensation of its members is a power which cannot be delegated.

The lawmaking body may, and frequently does, delegate to administrative bodies, including unofficial persons or bodies, authority and discretion to execute the various laws of the State and it delegates to various agencies of this State the authority to fix the compensation of various State employees. This recognized principle is based upon the rule of necessity but, in my opinion, has no application where the fixation of the compensation of the members of the legislative body are concerned.

I therefore advise that, in my opinion, the General Assembly may not delegate authority to fix its compensation to your committee.

You additionally inquire as to the limits to which the present General Assembly can raise its own pay and you refer to an expression Contained in the 1969-70 General Appropriations Act (69 Acts 584 § 93). The latter section provides:

‘It is hereby declared to be the intent of the General Assembly to fix the annual compensation of—members of the General Assembly (at) \$6,000.00 each—.’

This provision is not a part of the permanent provisions of the said Appropriations Act and expired at the end of the fiscal year 1969-70. Irrespective of this, the quoted provisions is an expression of intent only which would not have the effect of increasing the compensation of members of the General Assembly to \$6,000.00 per year. Subsequent provisions were adopted and are in

existence today, fixing the pay for subsequent General Assemblies in the amount of \$4,000.00 per year. The provisions quoted above are clearly of no legislative effectiveness.

*2 The limitations imposed upon the General Assembly with respect to its compensation are contained in Article 3, Section 19 of the Constitution of 1895, which provides, essentially, that 'no General Assembly shall have the power to increase the per diem of its own members.'

Very truly yours,

Daniel R. McLeod
Attorney General

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