

**Index; Legislature - Compensation - Increase of  
for attendance at special sessions to  
take effect at next ensuing session.  
Article 4, Sections 7 and 9 of the State  
Constitution, Mason's Minnesota Statutes of  
1927, Section 35, as amended by Chapter 67,  
Extra Session Laws 1935-36.**

**May 26, 1937**

Hon. Stafford King  
State Auditor  
STATE CAPITOL

*280-d*

Dear Sir:

Your letter to Attorney General William S. Ervin under date of May 23 has been referred to the undersigned for attention. Therein you direct attention to Chapter 67, Extra Session of the Forty-Ninth Legislature - 1935-36, and inquire:

"Will you please advise me whether or not this applies to members of the State Senate now in special session?"

Section 35 of Mason's Minnesota Statutes of 1927, as amended by said Chapter 67, Laws of 1935-36, reads as follows:

"The compensation of members of the house of representatives of the legislature of the state of Minnesota shall be \$1,000 for the entire term to which they are elected, payable as follows: \$250 on the first day of February, \$250 on the fifteen day of March of the year in which the regular legislative session is held, and \$500 on the last day of the regular legislative session; the compensation of senators of the legislature shall be \$2,000 for the entire term to which they are elected, payable as follows: \$250 on the first day of February, \$250 on the fifteenth day of March of each year in which a regular legislative session is held, and \$500 on the last day of such regular legislative session; provided, however, that in the event of extra legislative sessions, members of the legislature shall receive and be entitled to additional

compensation at the rate of \$10.00 per day for each day while so engaged in extra session; provided, further, that the maximum amount for each member of the legislature shall not exceed the sum of \$300 for each extra session. Said additional compensation shall be paid to the members of the legislature every ten days and on the last day during such extra legislative session.

"This act shall take effect and be in force from and after the first Tuesday after the first Monday in January, 1937."

We assume that you desire to be advised as to whether said Section 35 as amended contravenes either Section 7 or Section 9 of Article 4 of the State Constitution.

It will be noted that said Chapter 67 was approved on January 24, 1936. In other words said Chapter 67 was enacted by the Forty-Ninth Legislature in Special Session. A regular session of the Legislature, the Fiftieth Session, has intervened since the enactment of said Chapter 67 and the Fiftieth Legislature is now convened in special session.

The Forty-Ninth Legislature, at the time of the enactment of said Chapter 67, evidently had in mind the provisions of Section 7 of Article 4 of the State Constitution. This is apparent from the last paragraph of said chapter, which provides that "this act shall take effect and be in force from and after the first Tuesday after the first Monday in January, 1937."

Section 7 of Article 4 of the State Constitution relates exclusively to the compensation of members of the legislature

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and is the only section of the constitution in which that subject is mentioned. That section contains the only constitutional limitation of which we are aware relating to the power of the legislature in fixing its own compensation and reads as follows:

"The compensation of senators and representatives shall be three dollars per diem during the first session, but may afterwards be prescribed by law. But no increase of compensation shall be prescribed which shall take effect during the period for which the members of the existing house of representatives may have been elected."

Since said Chapter 87 was enacted by the Forty-Ninth Legislature, and by its express terms did not take effect until "after the first Tuesday after the first Monday in January, 1937," the Fiftieth Session, it must be apparent that said act does not contravene the provisions of said Section 7 of the State Constitution.

This office, as far back as 1907, in construing both Sections 7 and 8 of said Article 4 of the State Constitution, held that the legislature may adopt an act increasing its compensation to "become effective the first day of the next session at a time when members of the senate who helped pass the bill will have two more years to serve"; and that "they will during the years 1909 and 1910 receive the increased compensation." See opinion of Attorney General E. T. Young dated May 31, 1907 was reported as opinion No. 150 at page 223 of the Biennial Report of the Attorney General for the

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years 1906-1908, being Volume 3 of the Reports of the Attorney General. The Supreme Court of Minnesota in the case of State ex rel. v. Scott, 105 Minn. 513, in construing said Sections 7 and 9 of Article 4 of the State Constitution, arrived at the same conclusion as Attorney General Young in the above referred to opinion.

The Supreme Court in this case also definitely held that said Section 9 of Article 4 of the State Constitution applied only "to civil offices and not to legislative office."

Answering your specific inquiry, therefore, you are advised that the legislature is the sole judge of the compensation which the members thereof shall receive and that it has the power to increase the same, within the meaning of said Section 7 of Article 4 of the State Constitution as construed by the Supreme Court in the Scott case supra, "with the single limitation that the increase cannot take effect during the period for which the members for the then existing House may have been elected." This simply means that the members of the legislature may increase their compensation to take effect at a succeeding session. As hereinabove indicated the provisions of Section 9 of said Article 4 of the Constitution do not limit or restrict the powers of the legislature with reference to the fixing or increasing of such compensation of the members thereof to take effect at a succeeding session. It necessarily follows that said Chapter 67, Laws of 1935-36, applies to members of the Senate as well as members of the

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House. In other words "members of the House of Representatives of the legislature" as well as "Senators of the legislature" come within the language contained in said amendment "that in the event of extra legislative sessions, members of the legislature shall receive and be entitled to additional compensation at the rate of \$10.00 per day for each day while so engaged in extra session." You are therefore advised that the senators as well as the representatives of the Fiftieth Legislature, now in special session, are entitled to receive such additional per diem compensation so provided for by the Forty-Ninth Legislature.

Yours very truly

WILLIAM S. ERVIN  
Attorney General

By  
DAVID J. ERICKSON  
Deputy Attorney General

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