

TO: Lester K. Fryer, Chairman, Local Government Committee

FROM: John H. Broujos, Counsel

SUBJECT: House Bill 2122, Printer's No. 2800 - Incumbent Officers as Receiving Salary Only

REF: 53 PS 1550 and following

BACKGROUND: Act 113 of Session of 1971 (S.B. 603) provided for compensation of county officers in counties of the second through eighth classes. Section 12 thereof states that "the officers shall be paid only the salary provided herein for services performed for the county or any other governmental unit . . ."

PROVISIONS:

Section 1 (Sec. 12 (a)): This section amends Section 12 of the Act to define county officers as including incumbent officers.

CONSTITUTIONALITY: Counties throughout the Commonwealth have faced the question of whether the salary provisions of Act 113 apply to incumbent county officers who receive fees. A number of counties throughout Pennsylvania have implemented the Act for incumbent county officers. Each county faces the constitutional question as to whether payment of the incumbents violates the Constitution.

Article III, Section 27 of the Constitution provides, "No law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment. Section 12 (a) of Act 113 as it is now written does not violate the Constitution because the question of whether the Act applies to incumbents is a matter of application and interpretation. The Constitution supersedes the Act.

However, House Bill 2122, by specifically including incumbent officers, violates the Constitution to the extent that the incumbent officers are officers who would receive a salary after enactment of 113 and prior to re-election or reappointment.

The remaining constitutional issue in Section 12 is confronted in sub-paragraph (b). This requires all "fees and commissions received in the conduct of any county office" to be paid directly to the county. If any amendment should be made to Act 113, it should be in this sub-paragraph (b) to provide that fees and commissions received in the conduct of any county office where the officer is an incumbent shall continue to be paid to the incumbent officer together with salary paid under existing legislation heretofore. Sub-paragraph (a) could be amended also for clarification to provide specifically for incumbent officers.

I anticipate this matter will be decided by the courts by litigation if it is not resolved through legislation.

September 26, 1972