



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

Opinion No. 2014-143

January 5, 2014

The Honorable Jon Woods  
State Senator  
Post Office Box 8082  
Springdale, Arkansas 72766

Dear Senator Woods,

You have asked for my opinion on an issue that has arisen regarding the duties of the Independent Citizens Commission, which was created by the passage of Issue No. 3 at the 2014 general election. Issue 3 is now known as Amendment 94 to the Arkansas Constitution.

You provide the following background for your request:

Amendment 94 created Article 19, section 31 of the Arkansas Constitution, which created the Commission and has specific charges for the Commission including setting the salaries of elected constitutional officers of the executive department, members of the General Assembly, justices and judges. Specifically, section 31(i)(3)(A)(i) states, "The [Commission] shall complete an initial review of the salaries for the positions under subsection (d) of this section no later than ninety days after the effective date of this section." A question has arisen about what specifically is to be included in this "initial review of the salaries." For instance, section 31(i)(3)(A)(ii) states that the Commission "may file any adjustments in salary *resulting from the initial review*" upon satisfying certain...requirements outlined in the Amendment.

With this background in mind, you ask the following question: "Must the [Commission] provide the proposed adjustments in salary levels for all relevant

elected officials in the ‘initial review,’ or may the Commission issue a fact-finding report as the initial review and make decisions on future salaries at a later date?”

## RESPONSE

This question cannot be answered with a simple “yes or “no,” but instead must be conditional. Nothing in Amendment 94 requires the Commission to ever make adjustments. But if the Commission does not propose a salary adjustment by the conclusion of the 90-day initial review, then Amendment 94 provides (1) that the existing salaries continue in force, and (2) that any subsequent proposed adjustment will be subject to a 15% cap. Therefore, if (as you say) the Commission decides to “make decisions on future salaries at a later date,” the Commission will be limited by the 15% cap.

## DISCUSSION

While nothing in Amendment 94 expressly addresses your question, an answer is clearly implied when one reads the Amendment’s relevant sections together as a whole. The Commission always has discretion about *whether* to adjust a given salary.<sup>1</sup> But, when it comes to the *amount* of the salary adjustment, the Commission’s authority does have limits. An understanding of these limits, and the types of meetings that Amendment 94 authorizes the Commission to have, is critical to answering your question.

For purposes of this opinion, Amendment 94 places two basic limits on the Commission’s authority to adjust salaries: (1) judges’ salaries cannot be reduced;<sup>2</sup> and (2) any adjustment to a salary affected by the amendment cannot exceed 15% of the salary to be increased or decreased.<sup>3</sup> But the latter limitation—the 15% cap—does not apply to “[s]alary adjustments resulting from the initial review.”<sup>4</sup>

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<sup>1</sup> Amendment 94, section 31 contains at least three bases to support this claim: *first*, subsection (i)(3)(A)(ii) (“The independent citizens commission *may file* any adjustments in salary resulting from the initial review with the Auditor of State...”); *second*, subsection (i)(4)(B) (“The independent citizens commission *may adjust* salaries as it deems necessary.”); *third*, subsection (e)(2)(A) (“*If* the independent citizens commission proposes to adjust a salary...” (emphases added).

<sup>2</sup> Amend. 94, § 31(g)(2)(B).

<sup>3</sup> Amend. 94, § 31(g)(3)(A).

<sup>4</sup> Amend. 94, § 31(g)(3)(B).

While Amendment 94 does not explain the process that must be followed during the “initial review,” the Amendment does make clear that the initial review must be concluded “no later than” 90 days after November 5, 2014.<sup>5</sup> Once the 90 days have elapsed, the Amendment considers the initial review “completed” and requires that the Commission meet “as necessary to review salaries” at least yearly.<sup>6</sup> So, under the Amendment, once the 90 days have elapsed, the only clear charge to the Commission is to meet (at least) annually to review salaries. This clearly implies that, by the conclusion of the initial review, the Commission will have proposed salary adjustments (if any).<sup>7</sup>

Therefore, the answer to your question—instead of being a simple “yes” or “no”—must be a conditional. If the Commission wants to adjust salaries and have that adjustment be free of the 15% cap, then the Commission must propose its adjustment(s) during the 90-day initial review period. Conversely, if the Commission issues a “fact-finding report” and postpones any action on salaries until after the first 90 days, then the salaries will continue at their current levels,<sup>8</sup> and any eventual adjustment will be subject to the 15% cap.

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL  
Attorney General

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<sup>5</sup> Amend. 94, § 31(i)(3)(A).

<sup>6</sup> Amend. 94, § 31(i)(4)(A) (“After completing the initial review under subdivision (i)(3) of this section, the [Commission] shall meet as necessary to review the salaries” at least yearly.).

<sup>7</sup> This opinion does not address the timelines and procedures established by Amend. 94, § 31(e). Given the latter, it is possible that the Commission’s initially-proposed salary might not be the final salary. But this fact does not detract from the fact that the Commission must have at least proposed adjustments within the initial-review period.

<sup>8</sup> Amend. 94, § 31(h) (“Salaries...shall continue as existing on November 4, 2014, until adjusted by the [Commission].”).