

OFFICE OF
THE COUNTY ATTORNEY
MONTGOMERY COUNTY, MARYLAND

Opinion No. 90.007
Date July 24, 1990

TO: Arthur Spengler, Staff Director
Montgomery County Council

FROM: Clyde H. Sorrell
County Attorney *C. H. Sorrell*

SUBJECT: Authority of County Council to Amend the Uniform
Salary Plan

You have asked if the County Council may amend the general salary schedule recommended by the Chief Administrative Officer. You have referred us to County Attorney Opinion No. 78.021 which states that the County Council may change the general salary schedule recommended by the Chief Administrative Officer. You have also indicated that the administrative practice has been to make changes to the general salary schedule through the budget process and that the Chief Administrative Officer has not formally submitted to the Council a general salary schedule for approval or disapproval.

It is the opinion of this office that the general salary schedule¹ may only be amended by the Chief Administrative Officer. Under present law, the County Council may not amend the uniform salary plan proposed by the Chief Administrative Officer. If the Council does not agree with the plan proposed by the Chief Administrative Officer, the Council's only option is either to disapprove or fail to approve the plan. The Council, however, may amend the uniform salary plan by legislation.

Section 401 of the Charter provides:

¹Unless otherwise indicated, section references are to the Montgomery County Code (1984).

The Council shall prescribe by law a merit system for all officers and employees of the County government . . . Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. (Emphasis added)

Section 402 of the Charter provides:

The Chief Administrative Officer, under the direction of the County Executive and subject to the merit system laws and regulations, shall be responsible for administering the County's merit system. (Emphasis added)

Section 33-11(b) implements these Charter sections; the section provides:

(1) Subject to approval by the County Council, the Chief Administrative Officer must issue and periodically amend a uniform salary plan known as the 'general salary schedule' for all classes of positions in the merit system.

* * *

(6) Subject to approval by the County Council, the Chief Administrative Officer must also issue and periodically amend compensation policies for overtime, pay differentials, and other appropriate salary and wage benefits.

The basic rule of statutory construction is to ascertain the intent of the legislature by applying the clear meaning of the language used in the legislative acts. See, Blum v. Blum, 295 Md. 135, 140 (1983). In our opinion, the language quoted from Sections 401 and 402 of the Charter as well as Section 33-11(b) is clear and unequivocal. Only the Chief Administrative Officer under the direction of the County Executive may propose amendments to the general salary schedule.

As with the regulation process, the Council may approve or disapprove the proposed salary plan, but may not amend it.²

We believe that County Attorney Opinion No. 78.021 signed by Richard S. McKernon, County Attorney, can be construed in a manner consistent with our conclusion. That Opinion provides that the County Council may make changes to the general salary schedule. The Opinion, however, does not expressly explain how these changes may be made. In our opinion, the Council may make changes to the general salary schedule by legislation. The Council may not change the general salary schedule by simply amending the salary plan proposed by the Chief Administrative Officer.

This conclusion is supported by Section 33-74 (now repealed by operation of law). That section required the Chief Administrative Officer to include a cost of living adjustment in the uniform salary plan each year. If the Council had the authority to amend the uniform salary plan submitted by the Chief Administrative Officer, Section 33-74 would have been in large part unnecessary.

Because of the need to provide you with a timely response, we have been unable to review in detail all documentation relating to the actual administrative process used to amend the general pay schedule since Mr. McKernon's opinion in 1978. We have preliminarily reviewed the County Executive's recommended FY 91, FY 90, FY 89 and FY 88 budgets. For these years, the administrative process seems to have been to propose changes to the general pay schedule in the recommended budget. Those budget resolutions which we have reviewed indicate explicit approval of the amendments to the pay plan.

We do not believe it is significant that these proposed amendments to the pay plan come under the signature of the County Executive rather than the Chief Administrative Officer. Section 402 of the Charter specifically provides that

²See, Section 2A-15.

the Chief Administrative Officer is subject to the direction of the County Executive in administering the County's merit system.

Even assuming for purposes of argument that the practice of submitting amendments to the general pay plan through the Executive's recommended budget is not consistent with Section 33-11(b), we do not believe that the practice eliminates the process imposed by Section 33-11(b). An administrative practice which is not consistent with the law does not amend that law. See, Permanent Financial Corporation v. Montgomery County, 308 Md. 239 (1986).

As indicated, the Council may amend the general pay plan by legislative action. It has been suggested that the Council could adopt legislation which would authorize the Council to adopt by resolution a general pay plan. We believe such legislation would violate the Charter unless the Executive were given an opportunity to veto the resolution under Section 208 of the Charter.


All of the legislative power of Montgomery County is vested in the County Council. Section 101, Charter. This power to legislate, however, is not unfettered. All legislative action taken by the Council must be submitted to the Executive for approval; if the Act is disapproved, the legislation is not effective unless approved by 5 members of the Council. Section 208, Charter.

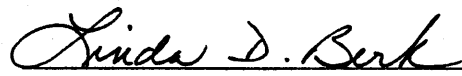
Generally, legislation is an act of general application which prescribes a policy. Scull v. Montgomery Citizens League, 249 Md. 271, 239 A.2d 92 (1968). We believe that establishing compensation levels for the various classes of employees falls within the parameters of the definition of a legislative act. See also, McQuillin Mun. Corp. §10.06 (3rd Ed.). Accordingly, we believe that the Council may adopt a general pay plan provided that the Council action is subjected to the Executive approval process under Section 208 of the Charter.

In conclusion, we believe that Section 33-11(b) authorizes the Council to disapprove a general pay plan proposed by the Chief Administrative Officer. The Council may not amend the proposed plan. The Council, however, is authorized to amend the general pay plan by legislation though not by resolution.

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We trust this Opinion has been responsive to your inquiry.


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cc: Sidney Kramer, County Executive
Lewis T. Roberts, Chief Administrative Officer
William P. Garrett, Director, Office of Personnel