

Ky. OAG 77-425, 1977 WL 247674 (Ky.A.G.)

Office of the Attorney General

Commonwealth of Kentucky

OAG

77

-

425

July 25, 1977

WATER DISTRICTS - Board of Commissioners,  
compensation

SYLLABUS: Where Board of Water Commissioners fixed their own salaries since 1974, the county judge and fiscal court could either enter an order establishing the salaries nunc pro tune, or they could enter an order ratifying specifically the Board's action in setting salaries.

Hubert Stark  
Chairman  
Trimble County Water District  
Bedford, Ky.

You are a member of the Trimble County Water District # 1 Commission. You ask about the compensation for the commissioners. Beginning with 1974, the commissioners voted themselves a salary of \$100 per month and have continued this practice to date. You specifically ask if you can keep such compensation.

[KRS 74.020\(4\)](#) provides [and this was the law in 1974], that each water commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund. The statute also requires that the compensation be set by the county judge with the approval of the fiscal court. Your board of commissioners should follow that procedure in the future.

In fixing and approving such salaries, the county judge and fiscal court must take into consideration the financial condition of the district and its ability to meet its obligations as they mature. [KRS 74.020\(4\)](#).

Since the annual salary for each commissioner is mandatory, it is our opinion that the county judge and fiscal court can ratify the salaries paid from 1974 through 1977, assuming that the district's financial condition and ability to meet its obligations as they mature will permit. In the field of contract, a fiscal court may ratify a contract which it had the power, in the first instance, to make. Likewise, since the statute mandatorily requires the fiscal court to fix and approve the commissioners' salaries, their ratifying the action taken previously by the commissioners is merely doing what they could have done and should have done. [Estill County v. Wallace, 219 Ky. 174, 292 S.W. 816 \(1927\)](#) 817. See also [Auxier v. Auxier, 182 Ky. 588, 206 S.W. 789 \(1918\)](#) 791, exposing the principle of nunc pro tune, i.e., the court doing an act "now" which should have been done "then." See also [Gross' Adm'x v. Couch, 292 Ky. 304, 166 S.W.2d 879 \(1942\)](#) 881, holding that a judge could enter a judgment nunc pro tune or ratify the unauthorized entry by the clerk and sign the order book in Perry County or elsewhere in that judicial district, the same becoming valid from the beginning.

Here the fiscal court could enter an order [nunc pro tune] providing for the fixing and approving of the salaries by the county judge and fiscal court for 1974, 1975, 1976, and 1977; or the county judge and fiscal court could, by an appropriate order, ratify the action taken by the board of commissioners. If action is taken under either alternative, the commissioners could legally keep their salaries previously paid [assuming the nunc pro tune would be for no less than \$100 per month].

\*2 Charles W. Runyan  
Asst. Dep. Atty. Genl.

Ky. OAG 77-425, 1977 WL 247674 (Ky.A.G.)  
END OF DOCUMENT