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KEVIN D. WALSH
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January 13, 2022

Via Electronic Mail

Thomas A. Arnone, Director
Monmouth County Board of Commissioners
1 East Main Street
Freehold, NJ 07728

RE: Improper Salary Modifications for the Monmouth County Board of Commissioners and Monmouth County Sheriff

Dear Director Arnone:

The Office of the State Comptroller (OSC) has conducted an investigation into the processes by which the Monmouth County Board of Commissioners established the salaries of commissioners and the Monmouth County Sheriff. OSC initiated this investigation after receiving several complaints alleging, among other things, that the Board failed to follow statutory requirements for modifying salaries. OSC's investigation has found that the Board did not follow the statutorily-required public process for increasing yearly salaries when, in 2020, it approved a \$3,000 salary increase for its members. OSC also found that the Board did not follow the requisite process to properly increase the Sheriff's salary, which has increased by \$42,210 over the last five years.

In conducting this investigation, OSC obtained and examined numerous documents, including: Monmouth County resolutions, Board Public Meeting Minutes, Board Executive Session Meeting Minutes, Board Work Session Meeting Minutes, the salary histories for the County Board, the salary history for the current County Sheriff, and various statutes. In addition, OSC interviewed the County Administrator, Sheriff, and Director of the Board.

In accordance with its mission of guarding against fraud, waste, and abuse and protecting public funds, OSC submits this letter for your consideration with a recommendation to address the deficiencies identified during its investigation.

I. Investigative Findings

OSC’s investigation examined how the Board established the annual salaries for county commissioners and the Sheriff.¹ Because these issues are governed by separate statutes, they are discussed separately below.

A. The Monmouth County Board of Commissioners Did Not Consistently Adhere to the Process of Publicly Modifying Commissioners’ Salaries

1. The Statute Governing Modifications to County Commissioners’ Salaries

Salaries of county commissioners must be established in accordance with *N.J.S.A.* 40:20-72 (Section 72). Section 72 requires a five-step public process.² First, the county commissioners must introduce a resolution alerting the public that they intend to modify commissioners’ salaries. Second, the county commissioners must announce the date, time, and location for a public hearing concerning the salary modification. Third, notice of the public hearing must be published in an authorized newspaper at least ten days prior to the hearing. Fourth, the county commissioners must conduct the public hearing. And fifth, a majority of the county commissioners must vote in favor of the resolution.³ These steps must be repeated if the resolution is amended during the process.⁴

Section 72 also provides a mechanism for the public to challenge a modification to county commissioners’ salaries.⁵ Under this subsection, a resolution approving the salary modification will become inoperative and subject to approval by voters during a general election if, within 20 days of adoption, a number of registered voters in the county equaling at least fifteen percent of the total county votes cast in the most recent election of members of the General Assembly sign a petition protesting the salary modification and present that petition to the county clerk.

2. The Monmouth County Board of Commissioners’ Salary Modifications

OSC’s examination revealed that the Board did not consistently adhere to the requirements of Section 72.

¹ Prior to the January 1, 2021 amendment of *N.J.S.A.* 40:20-1, county commissioners were known as “freeholders.” This letter uses only the updated term “commissioner” to refer to members of county boards.

² *N.J.S.A.* 40:20-72; see also *Donato v. Essex County Bd. of Chosen Freeholders*, 146 N.J. Super. 39, 42-44 (App. Div. 1997) (articulating the process a Board of County Commissioners must follow when modifying its members’ salaries under Section 72).

³ *Donato*, 146 N.J. Super. at 42-44.

⁴ *Ibid.*

⁵ *N.J.S.A.* 40:20-72(b).

Records provided by the County indicated that the Board set its commissioners' salaries by resolution at \$30,000 on January 10, 2002, following a public hearing on that date. In 2009, the Board chose to reduce the commissioners' salaries to \$27,000 because of "poor economic conditions generally and potential budget cuts affecting County workers."⁶ In effectuating this salary reduction, the Board correctly followed the process set forth in Section 72. County records revealed that on January 8, 2009, the Board introduced a resolution contemplating a ten percent reduction of the commissioners' salaries (*i.e.*, from \$30,000 to \$27,000). The resolution announced a date and time for a public hearing concerning the salary modification and ordered the County Clerk to advertise the public hearing in the "official newspaper of the County of Monmouth." Documents also revealed that the resolution authorizing the salary modification was introduced at a public meeting on January 22, 2009, and that members of the public did not provide any comment. The Board subsequently voted unanimously to approve the Resolution.⁷

The County, however, did not comply with these requirements when the commissioners implemented a subsequent 2020 salary increase. County records show that in 2020 the Board increased commissioners' annual salaries from \$27,000 to \$30,000.⁸ In response to an OSC document request, the County did not provide any documentation showing that the Board followed the requirements of Section 72 for this salary increase. The County did not produce any records showing that the Board introduced a resolution contemplating the salary increase; provided notice of a public hearing in an official newspaper; conducted a public hearing; or held a public vote on the increase.

3. The County's Actions Conflicted with Section 72 and Deprived Voters of Their Mechanism for Challenging the Commissioners' Salary Modification

Representatives from the County told OSC that they did not believe it was necessary to follow the Section 72 process for the salary modification instituted after 2009. The representatives explained their belief that a Board resolution was not required to return the commissioners' salaries to \$30,000 because that amount was previously approved by resolution following a public hearing in 2002.

That position is not supported by Section 72, which establishes a process that must be followed whenever salaries are "fixed," without regard to whether the salaries are being increased

⁶ Monmouth County Board of Chosen Freeholders, Regular Public Meeting, *Resolution No. 09-36 Amending Resolution No. 02-48 Establishing the Salaries of the Board of Chosen Freeholders Effective First Pay Period of 2009* (Jan. 8, 2009).

⁷ Monmouth County Board of Chosen Freeholders, Regular Public Meeting, *Resolution No. 09-52 Resolution Establishing the Salaries of the Members of the Monmouth County Board of Chosen Freeholders* (Jan. 22, 2009).

⁸ County records indicated that the commissioners' salaries temporarily increased to \$34,597 in 2019. County officials advised OSC that this increase was the result of an error in which a cost of living adjustment granted to County employees was incorrectly applied to the Board. They further stated that once the Board identified the mistake, it adjusted commissioners' salaries back to \$27,000 and no excess salary funds were ultimately paid to the commissioners in 2019. OSC's review of County records verified this information and confirmed that the commissioners did not receive an increased salary in 2019.

or decreased. The Board’s failure to follow the requirements of Section 72 created the very lack of transparency that the statute guards against. Section 72 promotes transparency of county government operations by requiring county commissioners to engage in a five-step public process—including, among other things, introducing a resolution and conducting a public hearing—in order to lawfully effectuate a salary modification. The Board’s reliance on a then-eighteen year old resolution to increase the commissioners’ salaries—particularly after that resolution had been superseded by a subsequent resolution in 2009—frustrated the requirements of and policy underlying Section 72.

The Board’s actions also prevented members of the public from exercising their powers under Section 72. The statute provides the public with a mechanism to challenge the salary modifications of a county board of commissioners. In failing to follow the five-step public process in 2020, the Board deprived its constituents of notice and opportunity to challenge the salary modifications under Section 72.

B. The Board Did Not Follow the Statutory Process for Modifying the County Sheriff’s Salary

Since 1971, modifications to the salary of a county sheriff have been governed by *N.J.S.A.* 40A:9-104, which states that a county board of commissioners

[b]y resolution, shall fix the annual salary of the sheriff in an amount equal to not less than sixty-five percent (65%) of the annual salary of a Judge of the Superior Court. Nothing in this section shall be construed to require that a sheriff whose annual salary exceeds the amount provided for herein shall be reduced, or that a board of chosen freeholders may not increase the salary of a sheriff in excess of the amount provided for herein.⁹

OSC’s investigation revealed that the Board has not adhered to the statutory requirements of *N.J.S.A.* 40A:9-104 when making changes to the Sheriff’s salary. A review of payroll records provided by the County for the years 2016 through 2021 indicated that the Sheriff received a salary increase in each of those years:

<u>Year</u>	<u>Sheriff’s Salary</u>
2016	\$136,133.00
2017	\$140,390.00
2018	\$143,900.00
2019	\$169,157.00
2020	\$173,693.00
2021	\$178,343.00

⁹ *N.J.S.A.* 40A:9-104 (emphasis added).

County officials advised OSC that most of the yearly salary increases for the Sheriff were cost-of-living adjustments with one exception: The Board approved the largest salary increase—from 2018 to 2019—to mitigate salary compression resulting from compensation increases granted to the Sheriff's staff.¹⁰

The County, however, did not provide any documentation showing that the Sheriff's salary was fixed by resolution. The Director confirmed that the Board did not pass a resolution approving the increases to the Sheriff's salary. The County also acknowledged that it has historically never complied with this process when approving the salary of its sheriffs.

The Board's failure to amend sheriffs' salaries by resolution violates *N.J.S.A.* 40A:9-104. That failure undermines the statute's purpose of providing transparency to the public regarding actions taken by the Board.

II. Recommendation

The Board failed to adhere to statutory requirements for modifying the salaries of its commissioners and the Sheriff. OSC recommends that the Board strictly adhere to the processes set forth in *N.J.S.A.* 40:20-72 when modifying commissioners' salaries and in *N.J.S.A.* 40A:9-104 when modifying the salary of the Sheriff.

III. County Response

The County was provided an opportunity to respond to the findings and recommendations made in this letter. In its response, the County advised that the Board has proposed a resolution to set the commissioners' salaries at \$30,000 and has scheduled a public hearing on the resolution for January 27, 2022. The County also passed a resolution setting the salary of the Sheriff at its January 6, 2022 meeting.

The County further informed OSC that it passed resolutions fixing the salaries of the following additional positions at its January 6, 2022 meeting: County Surrogate, County Clerk, and County Prosecutor.

IV. Conclusion

Transparency as to the salaries of public officials is a critical safeguard against misuse of taxpayer funds. The statutes governing commissioner and county sheriff salary modifications promote transparency by requiring county boards to inform the public of the modifications through the adoption of resolutions. The statute governing modifications to the salaries of county commissioners requires even greater transparency by compelling the additional steps of public notice, a public hearing, and an opportunity to challenge. The County must follow these processes when modifying commissioner and sheriff salaries.

¹⁰ Both County officials and the Sheriff separately stated to OSC that the Sheriff did not request any salary increases and was not involved in the Board's decision-making process as to his salary.

Thank you again for your cooperation during our review.

Respectfully,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: /s/ Ravi Ramanathan
Ravi Ramanathan, Director
Investigations Division