ORDINANCE NO. 17-457

AN ORDINANCE AMENDING TITLE 1 "GENERAL ADMINISTRATION", CHAPTER 1 "BOARD OF MAYOR AND ALDERMEN", SECTION 104, "COMPENSATION", OF THE MOUNT CARMEL MUNICIPAL CODE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED by the Board of Mayor and Aldermen as follows:

SECTION I. That Section 104, *COMPENSATION,* of Title 1, *GENERAL ADMINISTRATION,* Chapter 1, *BOARD OF MAYOR AND ALDERMEN,* of the Municipal Code be amended to read as follows:

1-104. <u>Compensation.</u>
In accordance with *Tennessee Code Annotated* §6-3-109, the compensation of the board of mayor and aldermen shall be established in the ordinance adopting the annual budget and capital program. The compensation of the mayor may not be diminished during the mayor's term of office.

The compensation to be received by the Mayor shall be $200 for each regularly scheduled and special-called board meeting and $50 for other meetings while representing the Town. The compensation to be received by each Alderman shall be $50 for each regularly scheduled and special-called board meeting and $25 for other meetings while representing the Town.

For the purposes of this statute, a "meeting" shall mean any meeting in which a member of the Board of Mayor and Aldermen participates which directly relates to their duties as a Board of Mayor and Aldermen member or has a bearing on the governance of the Town of Mount Carmel, Tennessee.

SECTION II. <u>Legal Status Provisions.</u>

A. <u>Conflict with Other Ordinances</u>. In case of conflict between this ordinance or any part thereof, and the whole or part of any existing or future ordinance of the Town of Mount Carmel, the provisions of this Ordinance shall be held to apply unless expressly provided otherwise therein.

B. <u>Validity</u>. If any section, clause, provision or portion of this ordinance shall be held to be in doubt or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision, or portion of this ordinance which is not of itself invalid or unconstitutional.

C. <u>Effective Date.</u> This ordinance shall become effective upon passage and publication, the public welfare requiring it.

CHRISTOPHER JONES, Mayor

ATTEST:

MOUNT CARMEL CITY SINCE 1961 TENNESSEE

MARIAN SANDIDGE, Recorder

APPROVED AS TO FORM:

JOHN PEVY, ATTORNEY

FIRST READING	AYES	NAYS	OTHER
Alderman Diane Adams	X		
Alderman Margaret Christian	X		
Alderman Eugene Christian	X		
Alderman Wanda Davidson	X		
Alderman Jennifer Williams	X		
Vice-Mayor Carl Wolfe	X		
Mayor Christopher Jones	X		
TOTALS	7		

PASSED FIRST READING: August 22, 2017

SECOND READING	AYES	NAYS	OTHER
Alderman Diane Adams	X		
Alderman Margaret Christian	X		
Alderman Eugene Christian	X		
Alderman Wanda Davidson	X		
Alderman Jennifer Williams	X		
Vice-Mayor Carl Wolfe	X		
Mayor Christopher Jones	X		
TOTALS	7	0	0

PASSED SECOND READING: September 26, 2017

PUBLISHED DATE: October 10, 2017
NEWSPAPER: *Kingsport Times-News*

MILLIGAN & COLEMAN PLLP
ATTORNEYS AT LAW
230 WEST DEPOT STREET
GREENEVILLE, TENNESSEE 37743

MAILING ADDRESS
P. O. BOX 1060
GREENEVILLE, TN 37744-1060

TELEPHONE (423) 639-6811
FAX (423) 639-0278

MILLIGANCOLEMAN.COM

THOMAS L. KILDAY
RONALD W. WOODS
JEFFREY M. WARD
THOMAS J. GARLAND, JR.
ELIJAH T. SETTLEMYRE
JOHN E. PEVY

S. J. MILLIGAN
1889-1982
JAMES W. FLETCHER
1924-1991
N.R. COLEMAN, JR.
1922-2012

GENE P. GABY
RETIRED

February 14, 2017

Board of Mayor and Aldermen
Town of Mount Carmel
100 E. Main St. East
Mt. Carmel TN 37645

Re: *Mount Carmel*
Our File No. 16-600

Dear Marian Sandidge and Tammy Connor:

I am writing this letter to be stored in the Town's documents as a memorialization of my conversation with Greg Cothron, Assistant General Counsel for the Tennessee Comptroller of the Treasury, regarding the findings of the Comtroller's investigation into the Town, particularly the findings with regards to the payment of Mount Carmel Board of Mayor and Aldermen governing body members. On Tuesday, February 7, 2017, I discussed the investigation findings with Mr. Cothron, and at that time we determined that he planned to review budget documentation provided by Marian Sandidge to see if there was any further investigation needed on the Comptroller's investigation findings that the Town had improperly paid governing body members dating back to the passage of Ordinance 328 in 2000.

On Monday February 13, I once again spoke to Mr. Cothron over the phone, whereupon he informed me that he had reviewed the documentation provided by Mrs. Sandidge, and had shared his findings with the audit department of the Tennessee Comptroller of the Treasury. Mr. Cothron stated that through this discussion, the auditors had conveyed that either through lack of access to this document, miscommunication, or an inability to understand the documentation provided, the auditors had not realized that Ordinance 328 was supported by underlying computation which would verify the Town's payment of governing body members at a rate higher than that of Ordinance 188, but nevertheless with a consistent scheme. Mr. Cothron informed me that the audit staff, after having viewed that document in context - and with adequate explanation - expressed that had they seen and fully understood that document prior to their findings, this issue regarding payment of governing body members likely would not have been a finding resulting from the investigation.

Likewise, the auditors informed Mr. Cothron that - in light of these documents and assuming that the budget had been uniformly figured in the same manner - the Town as not improperly paying the governing body members.

I informed Mr. Cothron that I was planning to memorialize this conversation in a letter to the Town, and that I would appreciate any sort of written confirmation from him that I could be given noting his agreement with the Town's payment practices. I also informed him that I planned to recommend that the Board of Mayor and Aldermen adopt a new ordinance which enumerates the rates to be paid to governing body members, in order to eliminate this type of confusion in the future. He noted that audit staff had also made a point of stating that current payment practices would be correct if budget documentation was consistent throughout the implementation of Ordinance 328 noting the pay scale for governing body members.

Based on this conversation with Mr. Cothron, I have advised that the Town should continue to pay the governing body members in accordance with the current pay scale.

As this is an ongoing concern for the Town, I wanted to send this letter apprising you all of this matter, and provide you with some potential options for addressing this issue. If anything within this letter requires more clarification, please feel free to contact me. Thank you for your time.

Very truly yours,

John E. Pevy
Town Attorney
MILLIGAN & COLEMAN

JEP
Enclosure

Subject: RE: Town of Mount Carmel

From: Greg Cothron (Greg.Cothron@cot.tn.gov)

To: mariansandidge@yahoo.com;

Date: Tuesday, August 29, 2017 8:54 AM

Ms. Sandidge.

As per our telephone conversation this morning, the letter provided by Mr. Pevy is an accurate reflection of the conversation I had with him in February. It is my recollection that the Comptroller's Office was provided with additional documentation after the release of the report, and had that documentation been provided and explained prior to issuance of the report, there would not have been a finding. I informed Mr. Pevy that the city would no longer need to seek repayment nor would the city need to lower the officials' salaries. I also recommend that the city more explicitly identify the compensation in the budget for future audit/public knowledge purposes.

Greg Cothron

Assistant General Counsel

Comptroller of the Treasury

Office of General Counsel

505 Deaderick Street, Suite 1700

Nashville, TN 37243

615 747-5246

From: Marian Sandidge [mailto:mariansandidge@yahoo.com]
Sent: Monday, August 28, 2017 10:08 AM

Subject: RE: Town of Mount Carmel

From: Greg Cothron (Greg.Cothron@cot.tn.gov)

To: mariansandidge@yahoo.com;

Date: Tuesday, August 29, 2017 8:54 AM

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Assistant General Counsel

Comptroller of the Treasury

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Nashville, TN 37243

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From: Marian Sandidge [mailto:mariansandidge@yahoo.com]
Sent: Monday, August 28, 2017 10:08 AM

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MAILING ADDRESS
P. O. BOX 1060
GREENEVILLE, TN 37744-1060

TELEPHONE (423) 639-6811
FAX (423) 639-0278

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February 14, 2017

Board of Mayor and Aldermen
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100 E. Main St. East
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As this is an ongoing concern for the Town, I wanted to send this letter apprising you all of this matter, and provide you with some potential options for addressing this issue. If anything within this letter requires more clarification, please feel free to contact me. Thank you for your time.

Very truly yours,

John E. Pevy
Town Attorney
MILLIGAN & COLEMAN

JEP
Enclosure

To: Michael Jarreau
Subject: Town of Mount Carmel

Morning Michael,

Hope things are going well for you. When you were here last, we briefly discussed the audit finding regarding the BMA compensation. You said if we didn't get a written response from the Comptroller's Office to let you know, and we haven't. I attached some documentation regarding this matter, including a letter from our city attorney after he spoke with Greg Cothron, Assistant General Counsel for the Tennessee Comptroller of the Treasury, regarding the finding. The aldermen, for some reason, will not let this matter go. If I could get something from your office, it would be much appreciated.

Thank you,

Marian Sandidge, City Recorder

Town of Mount Carmel

423-357-7311

Subject: RE: Compensation of the Board

From: John Pevy (jpevy@milligancoleman.com)

To: mariansandidge@yahoo.com;

Date: Friday, August 4, 2017 3:25 PM

Marian,

I think that is a good idea. Typically, our statement reads that the stricter of any conflicting provision will prevail. However, if we have used the quoted language below before, then I am all for it. We would just need to make sure that the Compensation Ordinance reads something like:

For purposes of this statute, a "meeting" shall mean any meeting in which a member of the Board of Mayor and Aldermen participates which directly relates to their duties as a Board of Mayor and Aldermen member, or has a bearing on the governance of the Town of Mount Carmel, Tennessee.

Let me know what you think of that?

Thanks,

John E. Pevy

MILLIGAN & COLEMAN, PLLP

P.O. Box 1060

230 West Depot Street

Greeneville, TN 37744

(423) 639-6811

From: Marian Sandidge [mailto:mariansandidge@yahoo.com]
Sent: Friday, August 4, 2017 10:48 AM
To: John Pevy <jpevy@milligancoleman.com>
Subject: Re: Compensation of the Board

John,

Can we just put the statement in the new ordinance regarding BMA compensation "that this ordinance supersedes any prior ordinance regarding same" or something to that affect? We have done that before. So we don't have conflicting statements in the code book. Just a thought.

Thanks,

Marian

On Thursday, August 3, 2017 4:05 PM, John Pevy <jpevy@milligancoleman.com> wrote:

Marian,

I think that we should likely pass Ordinance 17-550 in addition to the Appropriation Ordinance. However, I have been informed that we need to restructure the definition of a "meeting" for purposes of Board member compensation. I am working on the language for what to include in this section. Additionally, it may be necessary for the Board to revisit the Appropriation Ordinance, in the event that the two come into direct conflict. Please send me Ordinance 17-453, so that I may review and determine the appropriate course of action. Thanks, and my apologies for this confusion.

Best wishes,

John E. Pevy
MILLIGAN & COLEMAN, PLLP
P.O. Box 1060
230 West Depot Street
Greeneville, TN 37744
(423) 639-6811

From: Marian Sandidge [mailto:mariansandidge@yahoo.com]
Sent: Wednesday, August 2, 2017 2:01 PM
To: John Pevy <jpevy@milligancoleman.com>
Subject: Compensation of the Board

John,
We never presented Ordinance 17-550 to the Board. A copy is attached. It was the compensation of the Board basically. What I did was put the same language in the Appropriation Ordinance 17-453, Section 13. Do you think we need to pass 17-550 if we have already passed the Appropriation Ordinance with the same language in it? It is my intention to do this annually as per TCA 6-3-109.
Just let me know.
Thanks,
Marian Sandidge, City Recorder
Town of Mount Carmel
423-357-7311

Melissa,

I know that this is a long email and it is confusing, too. Hopefully, you can clarify this so I know how to proceed. First, let me see if I can explain the history of compensation for the board of mayor and aldermen at the Town of Mount Carmel.

Ordinance No	Mayor	Aldermen	Date Passed	Effective
48	$15	$10	10/11/1973	11/1974
76	$50	$25	09/11/1980	10/1981
188	$100	$75	1/22/1998	11/1/2000
328	no specific amount		6/26/2007	7/1/2010

The Mayor was paid $50, and the aldermen were paid $25 from 10/1981 until 7/1/2010 for bma meetings and special called meetings only. Somehow, Ordinance No. 188, was never implemented. I am assuming it was overlooked since it was passed in 1998 and didn't go into effect until 2000, but who knows. In 2007, town attorney, Joe May, was asked about increasing the mayor and aldermen pay. He prepared Ordinance No. 328, which the Board passed on 6/26/2007. The Board was told by Mr. May (as the ordinance states) that as long as the amount was established and appropriated for in the budget the Board was legal and no specific amounts needed to be placed in the Ordinance. Several years following the passage of Ordinance 328 during the budget workshops for FY2010 the Board of Mayor and Aldermen decided to pay the mayor $200 for bma meetings, and $50 for any meeting thereafter that was town related. The Aldermen were to be paid $50 for bma meetings and $25 for any meeting thereafter that was town related. We have been paying the board of mayor and aldermen in accordance with those amounts from 7/1/2010 until now. However, the Comptroller's Office issued investigative audit results dated January 31, 2017, stating:

INVESTIGATIVE RESULTS

FINDING 1 THE BOARD OF MAYOR AND ALDERMEN WERE NOT PAID AS PROVIDED BY ORDINANCE 188

We noted the following deficiencies related to payments made to the board of mayor and aldermen (BMA):

A. During the period under examination, the mayor was overpaid $2,850, and the aldermen were overpaid $1,050 for routine meetings with attorneys, committees, and/or department officials. On January 20, 1998, the BMA approved Ordinance 188, which provides that the mayor shall be paid $100 for attending each meeting of the BMA, whether a scheduled meeting or a special-called meeting, and each alderman shall be paid $75 dollars for attending the BMA meetings. Ordinance 188 did not provide any payment for meetings unrelated to a scheduled meeting or special meeting of the BMA; however, the mayor was paid $50, and the aldermen were paid $25 to attend the other meetings.

B. The mayor was overpaid $1,500 for attending official BMA meetings. This resulted from the mayor being paid $200 for each BMA meeting rather than the $100 per meeting that was approved by Ordinance 188.

C. From July 1, 2015, through March 31, 2016, aldermen were underpaid $2,075 for attending official BMA meetings. Aldermen were paid $50 to attend BMA meetings instead of $75 per meeting approved in Ordinance 188.

[redacted]

The table below summarizes the above-noted deficiencies:

Official	Overpaid Meetings (A.)	Mayor Overpaid (B.)	Aldermen (Underpaid) (C.)	Total Overpaid (Underpaid)
Mayor	$ 2,850	$ 1,500	$ 0	$ 4,350
Vice-Mayor	25	0	(325)	(300)
Alderman 1	425	0	(400)	25
Alderman 2	225	0	(375)	(150)
Alderman 3	225	0	(375)	(150)
Alderman 4	25	0	(300)	(275)
Alderman 5	125	0	(300)	(175)
Total	$ 3,900	$ 1,500	$ (2,075)	$ 3,325

RECOMMENDATION

The board of mayor and aldermen should be paid in accordance with the amounts authorized by Ordinance 188. Overpayments should be returned to the Town of Mount Carmel, and the town should correct any underpayments.

Attorney John Pevy can't decide what we need to do. So, I told him I would ask your opinion. If I can't get an opinion from you, I will contact the Comptroller's office. It is just so hard to get then to tell you what to do in writing. But, the aldermen keep asking for their back pay and this will not end until I get an answer.

John's first suggestion was for the Board to pass an ordinance at the next 2 meetings stating the pay amounts we are currently using, and continue to pay at those rates. I explained to him that Article XI, Section 9 of the Tennessee Constitution prohibits increasing the current board's salaries until the next election. By recommendation of the Comptroller, we should pay in accordance with the amounts authorized by Ordinance 188. If we pay by those amounts we will be diminishing the mayor's pay during his term, in violation of *Tennessee Code Annotated* §6-3-109. The Comptroller also suggested that overpayments for the period of July 15, 2015 through March 31, 2016 be paid back to the town and the town should correct any underpayments.

My question is what amounts should we be paying so we don't further violate code? If we go back to Ordinance No. 188, as suggested by the Comptroller, the mayor would now receive $100 for bma meetings and special called meetings, and the aldermen would now receive $75 for bma meetings and special called meetings **only**. They would ***not*** continue to be paid for every meeting they attend (ie: committee meetings, attending classes, meetings with other cities and towns, meetings with employees, etc. and so forth) If we ask for overpayments, and pay underpayments, should we go all the way back to July 1, 2010 or just the period the Comptroller has examined?

I have enclosed copies of the Ordinances and the Investigative Audit. If you need to call me for clarification, please feel free.

Thank you,

Marian Sandidge, City Recorder

Town of Mount Carmel

Subject: RE: Board of Mayor and Aldermen Compensation

From: Ashburn, Melissa Ann (ashburnm@tennessee.edu)

To: mariansandidge@yahoo.com;

Date: Tuesday, February 7, 2017 9:03 AM

Marian,

I spoke with John Pevy and gave him contact information for an attorney I know who works for the Comptroller. Do not do anything until John gets more information and direction from counsel to the Comptroller. I suspect the legal staff may have a different opinion than the auditor.

Good luck,

Melissa

Melissa A. Ashburn

Legal Consultant

University of Tennessee

Institute for Public Service

Municipal Technical Advisory Service

(865)974-0411

From: Marian Sandidge [mailto:mariansandidge@yahoo.com]
Sent: Monday, February 06, 2017 11:45 AM
To: Ashburn, Melissa Ann <ashburnm@tennessee.edu>
Subject: Board of Mayor and Aldermen Compensation

Subject: Budget Workpapers 2004-2017

From: Marian Sandidge (mariansandidge@yahoo.com)

To: jpevy@milligancoleman.com;

Date: Tuesday, February 14, 2017 2:42 PM

John,
Attached are the documents we discussed yesterday.
Thanks,
Marian Sandidge, City Recorder
Town of Mount Carmel
423-357-7311

Attachments

- 2004 SALARIES AND BENEFITS.pdf (344.64KB)
- 2005 SALARIES AND BENEFITS.pdf (388.70KB)
- 2006 SALARIES AND BENEFITS.pdf (408.81KB)
- 2007 SALARIES AND BENEFITS.pdf (453.71KB)
- 2008 SALARIES AND BENEFITS.pdf (460.20KB)
- 2009 SALARIES AND BENEFITS.pdf (479.05KB)
- 2010 SALARIES AND BENEFITS.pdf (508.98KB)
- 2011 SALARIES AND BENEFITS.pdf (495.93KB)
- 2012 SALARIES AND BENEFITS.pdf (487.84KB)
- 2013 SALARIES AND BENEFITS.pdf (570.09KB)
- 2014 SALARIES AND BENEFITS.pdf (482.91KB)
- 2015 SALARIES AND BENEFITS.pdf (476.91KB)
- 2016 SALARIES AND BENEFITS.pdf (565.95KB)
- 2017 SALARIES AND BENEFITS.pdf (617.25KB)