

Regarding any type of incentive/bonus payment by a local government I offer the following information:

Article IV Section 38 of the WV Constitution states:

6-38. Salaries of officials cannot be increased during official terms.

No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made; nor shall any Legislature authorize the payment of any claim or part thereof, hereafter created against the state, under any agreement or contract made, without express authority of law; and all such unauthorized agreements shall be null and void. Nor shall the salary of any public officer be increased or diminished during his term of office, nor shall any such officer, or his or their sureties be released from any debt or liability due to the state: Provided, the Legislature may make appropriations for expenditures hereafter incurred in suppressing insurrection, or repelling invasion.

WV Code §12-3-13 states:

§12-3-13. Salaries not to be paid until services rendered.

No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered.

Based on these two pieces of information it is our opinion that a bonus cannot be legally paid to an employee of a local government.

It is acceptable to institute increment pay also known as longevity pay. This would need to be a policy passed by council that continues from one year to the next. It cannot simply be for one year. For example the State's Longevity pay policy is for each employee to receive \$60 multiplied by their years of service. This payment is made with the fiscal year, not the calendar year so it is not paid in December. This payment is run through payroll and necessary taxes are withheld. Since it is a continuing policy, it is an acceptable practice. It is not a one-time bonus.

We always encourage entities to consult with their own legal counsel.

For additional information I have attached a court case where an elected official was directed to reimburse a county for bonuses authorized by that elected official.

Let us know if we can be of further service to you.