January 27, 2005

The Honorable Betty Montgomery
Auditor of State
88 E. Broad Street
P.O. Box 1140
Columbus, Ohio 43216-1140

SYLLABUS: 2005-004

1. A township clerk who entered upon the duties of office prior to November 5, 2004, and gave a bond in accordance with the provisions of R.C. 507.03, as then in effect, has provided the bond required to qualify for office and, during the existing term, is not required by Am. Sub. H.B. 148, 125th Gen. A. (2004) (eff. Nov. 5, 2004), to provide a bond that meets the minimum bond requirements established by the amendments to R.C. 507.03 adopted in Am. Sub. H.B. 148.

2. Pursuant to R.C. 1.48 and Am. Sub. H.B. 148, an individual who seeks to enter into the office of township clerk on or after November 5, 2004, either to begin a new term or to fill a vacancy in an existing term, is required to give a bond in the sum determined by the board of township trustees, but not less than the minimum amount provided in R.C. 507.03, as amended by Am. Sub. H.B. 148.

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January 27, 2005

OPINION NO. 2005-004

The Honorable Betty Montgomery
Auditor of State
88 E. Broad Street
P.O. Box 1140
Columbus, Ohio 43216-1140

Dear Auditor Montgomery:

We have received your request for a formal opinion concerning new minimum bond requirements adopted as part of Am. Sub. H.B. 148, which became effective on November 5, 2004. *See* Am. Sub. H.B. 148, 125th Gen. A. (2004) (eff. Nov. 5, 2004). Your specific question is whether a bond established when a township clerk took office in April of 2004 is sufficient for the existing term, or whether a bond should be obtained in the amount prescribed by Am. Sub. H.B. 148 and, if so, when the new bond should be in place.

You have explained that county prosecutors presented with this question have reached different conclusions. Some have advised that the current bond is sufficient for the existing term, while others have indicated that a current bond must comply with the new minimums set forth in R.C. 507.03, as amended by Am. Sub. H.B. 148. The townships, the Ohio Township Association, and surety providers across the state also are interested in this question and have expressed varying opinions regarding the implementation of the new minimum bond requirements. Accordingly, you have asked for a formal opinion to resolve all concerns.

As discussed more fully below, our analysis of the question leads us to conclude that a township clerk who entered upon the duties of office prior to November 5, 2004, and gave a bond in accordance with the provisions of R.C. 507.03, as then in effect, has provided the bond required to qualify for office and, during the existing term, is not required by Am. Sub. H.B. 148 to provide a bond that meets the minimum bond requirements established by the amendments to R.C. 507.03 adopted in Am. Sub. H.B. 148. However, pursuant to R.C. 1.48 and Am. Sub. H.B. 148, an individual who seeks to enter into the office of township clerk on or after November 5, 2004, either to begin a new term or to fill a vacancy in an existing term, is required to give a bond in the sum determined by the board of township trustees, but not less than the minimum amount provided in R.C. 507.03, as amended by Am Sub. H.B. 148.

Am. Sub. H.B. 148

Prior to its amendment by Am. Sub. H.B. 148, R.C. 507.03 provided that the township clerk, "before entering upon the discharge of his duties, shall give bond, payable to the board of township trustees, with sureties approved by such board and in such sum as it determines, conditioned for the faithful performance of his duties as clerk." *See* 1 Revised Code of Ohio (Bureau of Code Revisions 1953) as enacted by 1953-1954 Ohio Laws 7 (Am. H.B.1, eff. Oct. 1, 1953) (recodification of the entire Ohio General Code into the Ohio Revised Code). Thus, the township clerk was required to obtain a bond in whatever amount the board of township trustees determined.

Am. Sub. H.B. 148 amended R.C. 507.03 to prescribe specific minimum amounts for a township clerk's bond, depending upon the budget of the township.[1] For example, in a township

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[1] As amended by Am. Sub. H.B. 148, 125th Gen. A. (2004) (eff. Nov. 5, 2004), R.C. 507.03 states:

> The township clerk, before entering upon the discharge of official duties, shall give a bond, payable to the board of township trustees, with sureties approved by the board, in the sum determined by the board but not less than the sum provided in this section, and conditioned for the faithful performance of the duties of the office of township clerk. This bond shall be recorded by the clerk, filed with the county treasurer, and carefully preserved.
>
> The minimum sum of the township clerk's bond shall be as follows:
>
> (A) In a township with a budget of fifty thousand dollars or less, ten thousand dollars;
>
> (B) In a township with a budget of more than fifty thousand dollars but not more than one hundred thousand dollars, thirty-five thousand dollars;
>
> (C) In a township with a budget of more than one hundred thousand dollars but not more than two hundred fifty thousand dollars, sixty thousand dollars;
>
> (D) In a township with a budget of more than two hundred fifty thousand dollars but not more than five hundred thousand dollars, eighty-five thousand dollars;
>
> (E) In a township with a budget of more than five hundred thousand dollars but not more than seven hundred fifty thousand dollars, one hundred ten thousand dollars;
>
> (F) In a township with a budget of more than seven hundred fifty thousand dollars but not more than one million five hundred thousand dollars, one hundred thirty-five thousand dollars;
>
> (G) In a township with a budget of more than one million five hundred thousand dollars but not more than three million five hundred thousand dollars, one hundred sixty thousand dollars;

with a budget of more than $100,000 but not more than $250,000, the clerk must have a minimum bond of $60,000, and in a township with a budget of more than $10,000,000, the clerk must have a minimum bond of $250,000. The amendment to R.C. 507.03 retains the language requiring that the bond be given "before entering upon the discharge of … duties" and the requirement that the board of township trustees approve the sureties. It also retains the authority of the board of township trustees to determine the amount of the bond, but conditions the authority to make that determination upon the requirement that the amount be not less than the minimum sum provided by statute. R.C. 507.03. Under both versions of R.C. 507.03, the bond must be recorded by the clerk, filed with the county treasurer, and carefully preserved. R.C. 507.03; *see also* R.C. 3.33.

It is clear that there may be substantial costs involved in meeting the new minimum bond requirements. The Fiscal Note & Local Impact Statement prepared with regard to the recent amendment of R.C. 507.03 addressed this issue as follows:

> Currently, township clerks in Ohio are typically bonded at less than $25,000. The current range is approximately $3,000 to $25,000. These potential new costs [to the townships to meet minimum bond requirements] are considered permissive because in some townships it is the practice for the board of township trustees to pay the premium for the clerk's bond, whereas in other townships, the clerk assumes the fiscal responsibility for the bond premium. Therefore, while most townships do pay the premium for the clerk's bond, they are not required by law to do so.[2]

> (H) In a township with a budget of more than three million five hundred thousand dollars but not more than six million dollars, one hundred ninety-five thousand dollars;
>
> (I) In a township with a budget of more than six million dollars but not more than ten million dollars, two hundred twenty thousand dollars;
>
> (J) In a township with a budget of more than ten million dollars, two hundred fifty thousand dollars.

[2] R.C. 3929.17 states:

> The premium of any licensed surety company on the bond of any public officer, deputy, or employee shall be allowed and paid by the state, county, township, municipal corporation, or other subdivision, or board of education, of which such person giving the bond is such officer, deputy, or employee.

Therefore, if a licensed surety company provides the bond of a township clerk, the township must pay the premium. R.C. 3929.17; *see also* R.C. 3929.16; 1948 Op. Att'y Gen. No. 3067, p. 189 at 195 (noting the "very general and sweeping language" of G.C. 9573-1 (predecessor to R.C. 3929.17) and "assuming that the public is the real beneficiary entitled to recover on the

> Casualty insurance companies usually handle bond insurance, and their premium rates are subject to (a) the personal credit rating of the person to be bonded, and (b) the range of responsibilities (job description) of the township clerk. Exact costs may vary among townships and insurance companies. If the credit of the township clerk is poor, a policy may need to be handled by an insurance company that deals in specialty markets, which would charge a higher premium rate or elect not to offer coverage.

Ohio Legislative Service Comm'n, Fiscal Note & Local Impact Statement, 125th Gen. A., Sub. H.B. 148 (As Reported by Senate State & Local Govt. & Veterans Affairs) (March 24, 2004) (footnote added). The premium for a public official bond could vary widely, and might range from $5 to $10 per $1,000 of coverage. *Id.*

Although the legislation does not state the reasons for the adoption of minimum bond requirements, testimony relating to Am. Sub. H.B. 148 indicates that the amendments to R.C. 507.03 were motivated by a recent situation in which a township clerk stole millions of dollars of township funds. *See* Ohio Capitol Connection/Hannah News Service, Bill History, 125th Gen. A., H.B. 148, Committee meeting reports, Senate State & Local Government & Veterans Affairs (Feb. 4, 2004) and House County & Township Government (Sept. 17, 2003 and June 4, 2003) at http://www.ohcapcon.com. Clearly, minimum bond requirements cannot prevent all wrongdoing, but they can provide some protection for public funds. *See generally Am. Sur. Co. of New York v. Cortland Sav. & Banking Co.*, 143 Ohio St. 353, 55 N.E.2d 583 (1944); *Am. Guar. Co. v. McNiece*, 111 Ohio St. 532, 146 N.E. 77 (1924) (syllabus) ("[t]he sureties on a bond of an official, conditioned upon the faithful performance of his duties, are liable to all persons unlawfully injured by the nonfeasance, misfeasance or malfeasance perpetrated by such officer, either by virtue of his office or under color of his office").

Office of township clerk

Before addressing your question, it is helpful to review certain provisions governing the office of township clerk. The office of township clerk is an elective office with a four-year term. R.C. 507.01 (a township clerk "shall hold his office for a term of four years"). Current terms began on April 1, 2004, following the election in November of 2003.

In order to assume the office of township clerk, a person must take an oath of office and give bond as provided by law. *See* Ohio Const. art. XV, § 7 (oath of offices); R.C. 3.22 ("[e]ach person chosen or appointed to an office under the constitution or laws of this state … shall take an oath of office before entering upon the discharge of his duties"); R.C. 507.03; 1933 Op. Att'y Gen. No. 404, vol. I, p. 390 at 391 ("since 1859 the township clerk has been required to give a

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bond"); 1932 Op. Att'y Gen. No. 4880, vol. III, p. 1502; 1928 Op. Att'y Gen. No. 1683, vol. I, p. 327; 1927 Op. Att'y Gen. No. 761, vol. II, p. 1317.

bond conditioned for the faithful performance of the duties 'of his office', or 'as clerk'"). A person who is elected or appointed to a township office (including the office of township clerk) and who "fails to take the oath of office and give bond within the time required," is deemed to have refused the office, and the office is considered vacant. R.C. 503.27; *see also* R.C. 3.30; R.C. 503.24.

The township clerk's obligation to give bond is thus part of the act of qualifying for the office that must be performed before the clerk may begin to discharge the duties of the office. *See State ex rel. Brothers v. Zellar*, 7 Ohio St. 2d 109, 218 N.E.2d 729 (1966) (syllabus, paragraph 3) ("[q]ualification relates to the acts which the appointee must perform before he is entitled to enter upon the duties of the office"); *State ex rel. Nau v. Enoch Township Bd. of Trs.*, 2003-Ohio-2929 (Ct. App. Noble County) (township trustee is statutorily required to take the oath of office and provide a bond before discharging the duties of office); *Case v. Burrell*, 4 Ohio App. 260, 262 (Licking County 1915) ("both an election and qualification are necessary in order to render a township trustee an officer in contemplation of law"); *accord* 1928 Op. Att'y Gen. No. 1579, vol. I, p. 109 (syllabus, paragraph 2); 1918 Op. Att'y Gen. No. 697, vol. I, p. 179; *see also* 2000 Op. Att'y Gen. No. 2000-033 at 2-205 n.3.

The act of qualifying for an office thus is performed before the duties of the office are assumed. The title to an office becomes vested when a person elected to an office qualifies for it in the manner prescribed by law. *State ex rel. Kopp v. Blackburn*, 132 Ohio St. 421, 421-22, 8 N.E.2d 434 (1937) (syllabus, paragraph 1). The language of R.C. 507.03, both prior and subsequent to its amendment by Am. Sub. H.B. 148, indicates that a township clerk must give a bond before entering upon the discharge of the duties of township clerk. After the township clerk has qualified by giving a bond and meeting other requirements, the township clerk may proceed to discharge the duties of the office of township clerk. The bond is recorded, filed, and carefully preserved, thereby evidencing the fact of qualification and providing protection for public funds.

Implementation of minimum bond requirements

You have asked whether a bond established when a township clerk took office in April of 2004 is sufficient for the existing term, or whether the clerk is required by Am. Sub. H.B. 148 to provide a bond that meets the minimum bond requirements established by the amendments to R.C. 507.03. Am. Sub. H.B. 148 contains no provisions specifically addressing the date on which the amended bond requirements become applicable to particular township clerks. The bill became effective on November 5, 2004, but did not indicate when or how the minimum bond requirements were to be implemented.

The language of R.C. 507.03, as amended by Am. Sub. H.B. 148, states that "[t]he township clerk, *before entering upon the discharge of official duties*, shall give a bond … in the sum determined by the board but not less than the sum provided" in R.C. 507.03. R.C. 507.03 (emphasis added). Read literally, this language requires the township clerk to give a bond before entering upon, or undertaking, the official duties of the township clerk. As discussed above, this

language has historically been considered to impose a qualification that must be met before the office of township clerk may be assumed. The persons currently serving as township clerks, before they began their service, met the bonding qualification by providing whatever bond the appropriate board of township trustees then required. Because these township clerks have already entered upon the discharge of official duties, this language, by its terms, does not apply to them during the existing term.

The language imposing minimum bond requirements "before entering upon the discharge of official duties" will apply if a person currently serving as township clerk should seek to enter upon the discharge of official duties for a subsequent term, and the clerk will be required to give a bond that satisfies the minimum requirements then in effect before entering upon the discharge of duties for that term. Further, the requirement of giving a minimum bond before entering upon the discharge of official duties will apply to anyone who seeks, on or after November 5, 2004, to enter into the office of township clerk to fill a vacancy in an existing term, for such a person must qualify for the office by giving a bond under the law then in effect before entering upon the discharge of official duties. R.C. 507.03; *see also* R.C. 503.24. Thus, under the terms of R.C. 507.03, the newly-adopted minimum bond requirements apply only when a person enters into service as a township clerk, either to begin a new term or to fill a vacancy in an existing term. This construction of the statute is consistent with R.C. 1.48, which provides that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective."

The conclusion that the newly-adopted minimum bond requirements of R.C. 507.03 apply only when a person enters into service as a township clerk, either to begin a new term or to fill a vacancy in an existing term, is supported by the fact that a contrary reading would raise serious questions about matters that the General Assembly failed to address. As your letter indicates, Am. Sub. H.B. 148 does not state when the minimum requirements become effective with regard to someone currently serving as a township clerk, when a new bond for that individual must be in place, or what consequence would follow were the bond not provided. The absence of any provisions addressing these basic matters indicates that no increased bond is required. Had the General Assembly intended to impose a more stringent qualification upon persons currently holding office, it easily could have stated that intention directly and provided a time frame for satisfying the new requirements, particularly in light of the fact that substantial costs might be involved. *See generally State v. LaSalle*, 96 Ohio St. 3d 178, 2002-Ohio-4009, 772 N.E.2d 1172, ¶ 15; *Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927); *Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm'n*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926).

The potential of substantial costs also weighs in favor of a literal reading of the statute that requires compliance with the minimum bond requirements only "before [an individual] enter[s] upon the discharge of official duties [of the township clerk]," either for a new term or to fill a vacancy. R.C. 507.03. Before a person enters into the office of township clerk, the township and the prospective clerk are aware of the need for qualification and of the nature and extent of the costs that might be involved in procuring the necessary bond. They are, therefore, in a position to make reasonable practical and fiscal decisions regarding the action to be taken

before the office is assumed. As noted above, it may be difficult for some individuals to meet the minimum bond requirements, and substantial costs may be involved. There is no indication that the General Assembly intended to raise these concerns as in-term issues for individuals currently serving as township clerks. This factor, as well, supports the conclusion that the General Assembly intended to make the minimum bond requirements applicable only to persons entering into the discharge of the duties of township clerk, and not to township clerks who are currently qualified and have been performing the duties of their office.

Prior to the amendment of R.C. 507.03 by Am. Sub. H.B. 148, each board of township trustees had authority to establish the amount of bond that the township clerk was required to provide. The statute contained no monetary suggestions or restrictions, stating simply "such sum as it [the board of township trustees] determines." *See* 1 Revised Code of Ohio (Bureau of Code Revisions 1953) as enacted by 1953-1954 Ohio Laws 7 (Am. H.B.1, eff. Oct. 1, 1953) (recodification of the entire Ohio General Code into the Ohio Revised Code). Hence, each board of township trustees had authority to set the bond requirement for its township clerk at a figure sufficient to protect the funds of the township to the extent deemed appropriate by the board of township trustees. The amendment limits the board's discretion by setting a minimum bond amount, but it does not impose an entirely new requirement or provide for a need that had not previously been recognized. The General Assembly provided no indication that it intended to apply the amendment to persons currently serving as township clerks, nor is there an apparent reason for which that sort of application would be needed.

Continuing to meet qualifications

As discussed above, once a person has qualified for the office of township clerk by taking an oath and providing a bond, that person may undertake the duties of the office. It has been established, as a general rule, that a public official who has qualified for an office and has begun to serve in the office is required to continue to meet the qualifications of the office throughout the term of service. *See, e.g., State ex rel. Wilson v. Gulvas*, 63 Ohio St. 3d 600, 604, 589 N.E.2d 1327 (1992) ("noncompliance with a statutory prerequisite for holding office is a disqualification by operation of law and automatically creates a vacancy"); *State ex rel. Boda v. Brown*, 157 Ohio St. 368, 373, 105 N.E.2d 643 (1952) (an officer must be qualified to hold his office not only when he is elected or appointed to it but also throughout his term; otherwise he is disqualified by operation of law from continuing in the office); 2002 Op. Att'y Gen. No. 2002-015 at 2-89 n.1 ("[a]n officer who fails to maintain the qualifications statutorily required for office will be deemed to have resigned"); 1998 Op. Att'y Gen. No. 98-009 at 2-50 ("[i]t is … a fundamental rule of law that a public officer must be qualified to serve throughout her entire term of office"); *see also, e.g.,* R.C. 503.241 ("[w]henever, any township officer ceases to reside in the township … his office shall be deemed vacant"); 2001 Op. Att'y Gen. No. 2001-004.

With regard to the bond of a township clerk, the requirement of continued compliance is generally met by filing and recording the bond, and carefully preserving it, as required by statute. R.C. 507.03; *see also* R.C. 3.33. Because of the nature and purposes of a bond, it may be necessary for a substitute bond to be provided. For example, if a surety should ask to be released

from further liability upon the surety's bond, the board of township trustees may require a township clerk to give a new bond. *See* R.C. 1341.16-.18. *See generally* R.C. 505.03; 1931 Op. Att'y Gen. No. 2948, vol. I, p. 241; 1928 Op. Att'y Gen. No. 1683, vol. I, p. 327; 1927 Op. Att'y Gen. No. 761, vol. II, p. 1317.

In the instant case, you have asked, in essence, whether a change in the bond required for qualification will apply to a person currently serving in the office. The answer to that question depends, initially, upon the language of the provision establishing the changed qualification. If that language does not indicate that the changed qualification applies to a person currently serving, then the change clearly will not apply. Our analysis of the language of Am. Sub. H.B. 148 indicates that this is the situation in the instant case – that the General Assembly simply did not intend that the minimum bond requirements should apply to persons currently serving as township clerks.

It might, however, be argued that the amendments enacted by Am. Sub. H.B. 148 impose minimum bond requirements upon persons currently serving as township clerks. One possible basis for this argument would be that the language "before entering upon the discharge of official duties," means "before performing any duty of the township clerk," so that a township clerk is not permitted to perform any duty on or after November 5, 2004, without complying with the minimum bond requirements of R.C. 507.03. If, under such an argument, a change in qualifications should apply to persons currently serving as township clerks, there follows the question whether there would be concerns about the retroactive application of the legislative change.

It is firmly established that the General Assembly has authority to adopt and amend statutes governing township clerks, and to establish and change the qualifications, powers, and duties of the clerks. *See, e.g., State ex rel. Watson v. Hamilton County Bd. of Elections*, 88 Ohio St. 3d 239, 242, 725 N.E.2d 255 (2000) ("[l]egislative bodies like the General Assembly are generally authorized to promulgate qualifications for those who seek public office," within constitutional limits); *State ex rel. McKell v. Robins*, 71 Ohio St. 273, 291, 73 N.E. 470 (1905) ("[i]t is the undoubted right of the general assembly to require bonds to be given 'for the faithful performance of official or fiduciary duties, or the faithful keeping, applying or accounting for funds or property, or for one or more such purposes,' and to make reasonable requirements as to execution, approval and security to effectuate fully the purposes thereof"); *Urner v. Outcalt*, 32 Ohio App. 357, 168 N.E. 55 (Hamilton County 1928). It is generally accepted that a legislative body that has created an office may abolish the office or change the terms of the office, in order to serve the public interest, even if that action might result in curtailing the unexpired term of an incumbent. *See State ex rel. Doerfler v. Price*, 101 Ohio St. 50, 57, 128 N.E.2d 173 (1920) ("[t]he general assembly of Ohio that passed the act providing for the prosecuting attorney of each county may tomorrow abolish the office and create a new one, or entirely change the duties of the office"). The General Assembly's authority to make changes in public offices, however, may be exercised only within constitutional limits. *Id.*; *State ex rel. Watson v. Hamilton County Bd. of Elections*; *State ex rel. McKell v. Robins*; *Urner v. Outcalt*; *State ex rel. Flinn v. Wright*, 7 Ohio St. 333 (1857); *see also* R.C. 3.01 ("[a] person holding an office of public trust shall

continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state"); R.C. 3.02.

Ohio Const. art. II, § 28[3] denies the General Assembly power to pass retroactive laws or laws impairing the obligation of contracts, but permits the enactment of remedial legislation that is retroactive in effect. *See, e.g., Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St. 3d 100, 522 N.E.2d 489 (1988); *Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. 198, 203, 39 N.E.2d 148 (1942) (quoting from *Society for the Propagation of the Gospel v. Wheeler*, 22 F. Cas. 756, 767 (C.C.D.N.H. 1814) (No. 13,156), reported by 2 Gall. 105, 139) ("every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective"); *see also* R.C. 1.48 ("[a] statute is presumed to be prospective in its operation unless expressly made retrospective"); *State v. LaSalle* (syllabus, paragraph 1) ("[a]bsent a clear pronouncement by the General Assembly that a statute is to be applied retrospectively, a statute may be applied prospectively only"). The imposition of additional qualifications upon a person currently serving as township clerk would raise issues of unconstitutional retroactivity. *See, e.g.*, 1981 Op. Att'y Gen. No. 81-100; 1981 Op. Att'y Gen. No. 81-067.

For example, *Fraternal Order of Police Youngstown Lodge No. 28 v. Hunter*, 49 Ohio App. 2d 185, 360 N.E.2d 708 (Mahoning County 1975), concerns a situation in which the civil service commission of a municipality promulgated a rule making any officer or employee not residing within the city limits after a specific date subject to dismissal. The court found that the rule was invalid when applied to persons who entered the classified service before the enactment date because it was retroactive in its operation. The court did not consider the application of the rule to an officer, but the same principle would appear to apply to an individual serving in an elective office for a prescribed term. *See also, e.g., Lakengren v. Kosydar*, 44 Ohio St. 2d 199, 201, 339 N.E.2d 814 (1975) ("[t]he prohibition against retroactive laws … is a bar against the state's imposing new duties and obligations upon a person's past conduct and transactions, and it is a protection for the individual who is assured that he may rely upon the law as it is written and not later be subject to new obligations thereby"). There is an expectation that an officer who has qualified to serve in an elective position for a designated term will be permitted to complete that term of service without being confronted with substantial changes in the nature of qualifications required. *See generally* R.C. 3.01; R.C. 507.01; *Kucinich v. Forbes*, 432 F. Supp. 1101, 1116-17

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[3] Ohio Const. art. II, §28 states:

> The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

(N.D. Ohio 1977) (voters have an interest in the continued service of the officials whom they have elected); *Bank of Toledo v. City of Toledo*, 1 Ohio St. 622, 655 (1853) ("the incumbent has an existing legal right in the office, from which the Legislature has no power to dismiss him by any direct act, or to divest him by a law prospectively adding new qualifications, for the office"); *In re Advisory Opinion to the Governor –Terms of County Court Judges*, 750 So. 2d 610, 615 (Fla. 1999) (finding that a constitutional amendment did not change the terms of judges already in office both because the amendment did not indicate that it would so apply and because such application "would undermine the settled expectations of both the officeholders and the people"); 1981 Op. Att'y Gen. No. 81-100 at 2-380 (concluding that a statute requiring the removal of community mental health board members whose relatives held certain positions applied to members currently serving on the board, as provided by the General Assembly, but questioning the constitutionality of that retroactive application and stating that a member of the board "does have the expectation that he will serve for four years, absent some conduct which constitutes statutory grounds for removal").

In contrast, 1993 Op. Att'y Gen. No. 93-008 found it permissible to apply to the executive director of an administrative board a statute that changed the qualifications required for service, thereby requiring the termination of the executive director, who was in the unclassified service and served at the pleasure of the board. With regard to the retroactivity argument, that opinion states:

> Application of the new qualifications to the person currently serving as the executive director will disqualify her from continuing to serve in that position. Such application does not, however, constitute a retroactive application of the law. Rather, the new qualifications are being applied prospectively to limit only future service in the position of executive director of the Board, without any effect on the present executive director's past service in that position prior to the effective date of the amendment … that established the new qualifications.

1993 Op. Att'y Gen. No. 93-008 at 2-41. The 1993 opinion thus finds that the prospective application of new qualifications does not conflict with restrictions against retroactivity. It is questionable, however, whether this argument may fairly be applied to a person who holds an elective office for a prescribed term, where the change in qualification requirements would render the individual unable to complete the statutory term of office after the title to that office has vested. *See State ex rel. Kopp v. Blackburn*; 1988 Op. Att'y Gen. No. 88-059 at 2-299 (legislative enactments dealing with the status of governmental employees are matters of policy that are subject to change at the discretion of the legislature, but the legislature does not have discretion to change vested contractual rights); 1981 Op. Att'y Gen. No. 81-100 at 2-381 (concluding that a statute requiring the removal of community mental health board members whose relatives held certain positions applied to members currently serving on the board, as provided by the General Assembly, but questioning the constitutionality of that retroactive application and stating that, "although community mental health board members are in the unclassified service, they do have an expectancy of continued employment for the term for which they were appointed, and thus, arguably may not be constitutionally removed from their

positions because they do not meet qualifications imposed after their appointment"); 1981 Op. Att'y Gen. No. 81-067 (syllabus) ("[p]ursuant to R.C. 1.48, R.C. 5126.03(D), which prohibits a person from serving as an employee of a county board of mental retardation and developmental disabilities if a member of his immediate family is a county commissioner of the county served by the board, applies only to those classified employees hired after the effective date of R.C. 5126.03(D)").

Questions of retroactivity are complex, turning upon specific provisions and circumstances, and we are unable to predict what decision a court might make in a particular case. In this instance, it is unnecessary for us to attempt a comprehensive analysis of the possible retroactivity of the statute at issue because, as discussed above, Am. Sub. H.B. 148 provides no indication that the amendments to R.C. 507.03 are to be applied retroactively. *See generally State v. LaSalle* at ¶ 15 ("[i]n drafting prior legislative enactments and amendments, the General Assembly certainly has demonstrated its ability to include retrospective language when it so desires"); *Warren County Bd. of Comm'rs v. City of Lebanon*, 43 Ohio St. 3d 188, 190, 540 N.E.2d 242 (1989) (the issue of whether a statute may constitutionally be applied retrospectively does not arise unless the General Assembly has specified that it be applied retrospectively).

R.C. 1.48 states that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." Am. Sub. H.B. 148 retained the language of R.C. 507.03 stating that the township clerk must give bond "before entering upon" the duties of township clerk. Am. Sub. H.B. 148 contains no indication that the newly-adopted minimum bond requirements apply to township clerks currently qualified for and serving in office. The presumption of R.C. 1.48 thus operates to make the amendments to R.C. 507.03 apply prospectively, to persons entering upon the discharge of the duties of township clerk on or after November 5, 2004, and obviates the need to make a determination regarding the constitutionality of a retroactive application. *See* R.C. 1.47; 1981 Op. Att'y Gen. No. 81-067.

Conclusions

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. A township clerk who entered upon the duties of office prior to November 5, 2004, and gave a bond in accordance with the provisions of R.C. 507.03, as then in effect, has provided the bond required to qualify for office and, during the existing term, is not required by Am. Sub. H.B. 148, 125th Gen. A. (2004) (eff. Nov. 5, 2004), to provide a bond that meets the minimum bond requirements established by the amendments to R.C. 507.03 adopted in Am. Sub. H.B. 148.

2. Pursuant to R.C. 1.48 and Am. Sub. H.B. 148, an individual who seeks to enter into the office of township clerk on or after November 5, 2004, either to begin a new term or to fill a vacancy in an existing term, is

required to give a bond in the sum determined by the board of township trustees, but not less than the minimum amount provided in R.C. 507.03, as amended by Am. Sub. H.B. 148.

Respectfully,

JIM PETRO
Attorney General