August 22, 2005

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street, 4th Floor
Lancaster, Ohio 43130

SYLLABUS: 2005-032

The clerk of court for a municipal court governed by R.C. 1901.31(C)(2), including the Fairfield County Municipal Court, is entitled to receive as annual compensation a sum equal to 85% of the salary paid to a judge of the municipal court pursuant to R.C. 1901.11(B)(1)(a) and (b), but is not entitled to receive 85% of the additional $1,500 paid, pursuant to R.C. 1901.11(B)(2), to the presiding judge who is also the administrative judge of the court. (1988 Op. Att'y Gen. No. 88-014, overruled in part; 1993 Op. Att'y Gen. No. 93-059, overruled on the basis of changes in relevant statutes and rules.)

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OPINION NO. 2005-032

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street, 4th Floor
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have requested a formal opinion on the question whether the clerk of court for a municipal court in a jurisdiction of 100,000 or more is entitled to 85% of the stipend awarded pursuant to R.C. 1901.11(B)(2) to the presiding judge who is also the administrative judge of the court. For the reasons below, we conclude that the clerk of court is not entitled to 85% of that stipend, but is entitled by R.C. 1901.31(C)(2) to 85% of the salary paid to a judge of the municipal court in accordance with R.C. 1901.11(B)(1)(a) and (b).

Background

Your question has arisen in connection with the Fairfield County Municipal Court, which has jurisdiction within Fairfield County. *See* R.C. 1901.02(A)(20) and (B). Because Fairfield County's population exceeded 100,000 beginning with the 1990 Census, the position of Clerk of Court of the Fairfield County Municipal Court became an elected position beginning in January of 1992. *See* R.C. 1901.31(A)(1)(a). The annual compensation for the Clerk of Court of the Fairfield County Municipal Court is set by R.C. 1901.31(C)(2) at a sum equal to 85% of the salary of a judge of the court.

Since 1992, the clerk has received 85% of the salary of a judge of the Fairfield County Municipal Court. Recently, however, the clerk has requested additional compensation in the amount of 85% of the $1,500 stipend paid in accordance with R.C. 1901.11(B)(2) to the presiding judge of a municipal court who is also the administrative judge of the court.

As provided in R.C. 1901.08, the Fairfield County Municipal Court has two judges. Pursuant to R.C. 1901.11(C), the compensation of the judges (other than amounts paid by the

state[1]) is paid by the City of Lancaster and Fairfield County, with 3/5 of the amount payable from the city treasury and 2/5 of the amount payable from the county treasury. Pursuant to R.C. 1901.31(C)(3), the compensation of the clerk is payable from the city and county treasuries in the same 3/5 and 2/5 proportions. Therefore, any decision regarding the compensation of the clerk affects both the City of Lancaster and Fairfield County. You have asked for our assistance in this matter because, as county prosecutor, you are the legal adviser of the county and not of the city, *see* R.C. 309.09; R.C. 733.01: R.C. 733.54, and you are reluctant to make a decision that would adversely affect a unit of local government that is not your client, and also because you believe that there should be uniformity concerning the payment of clerks of court throughout the State of Ohio.

Compensation of municipal court judges

Municipal courts are created pursuant to statutes enacted by the General Assembly, in accordance with its constitutional authority to establish courts inferior to the Ohio Supreme Court and provide for their maintenance and employees. *See State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 32, 222 N.E.2d 798 (Stark County 1966); Ohio Const. art. IV, § 1; R.C. 1901.01; 1990 Op. Att'y Gen. No. 90-110 at 2-485 to 2-487. R.C. 1901.01 establishes municipal courts in certain named municipalities, including Lancaster. Beginning January 2, 2000, that court is known as the Fairfield County Municipal Court and has jurisdiction within Fairfield County. R.C. 1901.02(A)(20) and (B).

Under Ohio Const. art. IV, § 6(B), municipal court judges (as judges of courts of record established by law, *see* R.C. 1901.02(A)) "receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office." Judges designated as full-time judges by R.C. 1901.08 receive the compensation established by R.C. 1901.11(B). The Fairfield County Municipal Court has two full-time judges. *See* R.C. 1901.08. In accordance with R.C. 1901.11(C), the City of Lancaster pays 3/5 of the judges' compensation and Fairfield County pays 2/5 of the judges' compensation, apart from amounts paid by the state. *See* note 1, *supra*.

R.C. 1901.31 provides for the selection, compensation, and bonding of clerks and deputy clerks of municipal courts. The provision applicable to the Clerk of Court of the Fairfield County Municipal Court states:

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[1] Pursuant to R.C. 141.04, municipal court judges receive prescribed amounts of compensation from the state treasury, in addition to the amounts received from municipal and county treasuries pursuant to R.C. 1901.11. *See* R.C. 141.04(A)(5) and (6); R.C. 1901.11(B)(1)(b). 1988 Op. Att'y Gen. No. 88-014 concluded, in paragraph 2 of the syllabus, that amounts received by a municipal court judge pursuant to R.C. 141.04 are included with amounts received pursuant to R.C. 1901.11 in determining the salary of the municipal court clerk pursuant to R.C. 1901.31(C).

> In a municipal court, other than the Hamilton county, Medina,[2] Portage county, and Wayne county municipal courts, for which the population of the territory is one hundred thousand or more, and in the Lorain municipal court, the clerk of the municipal court shall receive annual compensation in a sum equal to eighty-five per cent of the salary of a judge of the court.

R.C. 1901.31(C)(2) (footnote added). Thus, by statutory directive, the Clerk of Court of the Fairfield County Municipal Court is entitled to annual compensation equal to 85% of "*the salary of a judge of the court*." R.C. 1901.31(C)(2) (emphasis added). The clerk's compensation is payable in semimonthly installments from the same sources and in the same manner as in R.C. 1901.11 – that is, 3/5 from the Lancaster City treasury and 2/5 from the Fairfield County treasury. R.C. 1901.11(C); R.C. 1901.31(C)(3).

The compensation for judges of the Fairfield County Municipal Court, and for other full-time municipal court judges and certain part-time municipal court judges, is prescribed by R.C. 1901.11(B), as follows:

> (B)(1)(a) *Judges designated as full-time judges* by section 1901.08 of the Revised Code, and all judges of territories having a population of more than fifty thousand regardless of designation, are subject to section 4705.01 of the Revised Code[3] and, pursuant to division (C) of this section, beginning July 1, 1997, *shall receive as compensation sixty-one thousand seven hundred fifty dollars per annum.*
>
> (b) These judges *also shall receive*, in accordance with division (B) of section 141.04 of the Revised Code, *the compensation described in division (A)(5) of that section from the state treasury.*
>
> (2) *The presiding judge of a municipal court who is also the administrative judge* of the court, shall receive, pursuant to division (C) of this section, *an additional one thousand five hundred dollars per annum.* (Emphasis and footnote added).

The compensation of the Fairfield County Municipal Court judges thus consists of three components. The first, determined pursuant to R.C. 1901.11(B)(1)(a), is the amount of $61,750 per annum, prescribed by statute and paid pursuant to R.C. 1901.11(C), with 3/5 of the amount payable from the city treasury and 2/5 payable from the county treasury.

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[2] The reference to the Medina Municipal Court is deleted by Am. Sub. H.B. 66, 126th Gen. A. (appropriations eff. June 30, 2005, amendments subject to referendum eff. ninety-one days later unless referendum petition is filed, *see* sec. 612.03, uncodified).

[3] R.C. 4705.01 governs the practice of law and imposes certain restrictions upon the activities of judges.

The second component of the compensation of the Fairfield County Municipal Court judges, determined pursuant to R.C. 1901.11(B)(1)(b), is an amount described in R.C. 141.04(A)(5), payable from the state treasury in accordance with R.C. 141.04(B). As described in R.C. 141.04(A)(5), full-time judges of a municipal court are paid from the state treasury the amount prescribed for each year, including increases calculated by use of the adjustment percentage established by statute. *See* R.C. 141.04(E)(3). These amounts are in addition to the amounts paid from the city and county treasuries. *See* note 1, *supra*.

The third component of the compensation of the Fairfield County Municipal Court judges is the amount prescribed by R.C. 1901.11(B)(2). This is the additional sum of $1,500, payable only to "[t]he presiding judge of a municipal court who is also the administrative judge of the court." R.C. 1901.11(B)(2).

In a municipal court having only one judge, that judge is designated as both the presiding judge and the administrative judge and, under current law, that judge is entitled to receive the additional $1,500 provided for serving in both of those positions. *See* R.C. 1901.09(A); Sup. R. 3(A)(3) and 4(A)(3).[4] A municipal court with two or more judges, including the Fairfield County Municipal Court, is governed by the provisions of R.C. 1901.09(B), stating that the presiding and administrative judge is elected or designated as provided in the Rules of Superintendence for the Courts of Ohio. R.C. 1901.09(B); *see* Sup. R. 3 and 4.

Pursuant to Rule 3 of the Rules of Superintendence for the Courts of Ohio, the presiding judge of a multi-judge court (including a two-judge court) is elected by a majority vote of the judges of the court, or, if equal division of the vote prevents an election, the judge having the longest total service on the court serves for one term. If two or more judges have equal periods of service, the presiding judge is determined by lot from those judges. In the event of a continued failure to elect, the position of presiding judge rotates among the judges in the order of seniority, based on the total length of service on the court. Sup. R. 3(A)(1). The term of the presiding judge is one year, beginning on January first. A judge may be elected to consecutive terms as presiding judge and may also serve as administrative judge pursuant to Rule 4. Sup. R. 3(A)(2). "In addition to the duties set forth in the Revised Code that do not conflict with the duties of the administrative judge set forth in Sup. R. 4," the presiding judge is authorized to call and conduct meetings of the judges and to make certain assignments of the judges. Sup. R. 3(B); *see* R.C. 1901.15 (the presiding municipal judge "has the general supervision of the business of the court" and the duty of approving the surety and terms of all official bonds).

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[4] 1993 Op. Att'y Gen. No. 93-059 concluded, under the statutes and rules then in effect, that the judge of a single-judge municipal court was not entitled to receive the additional compensation provided by R.C. 1901.11 for serving as both presiding and administrative judge. Because of changes in relevant statutes and rules, that conclusion is no longer valid, and 1993 Op. Att'y Gen. No. 93-059 is hereby overruled.

Pursuant to Rule 4, the administrative judge of a multi-judge municipal court is selected by a procedure similar to that for selecting the presiding judge, and, like the presiding judge, serves for a one-year term. An administrative judge may be elected to consecutive terms and may also serve as presiding judge pursuant to Rule 3. Sup. R. 4(A). The administrative judge has full responsibility and control over the administration, docket, and calendar of the court, and is responsible for the termination of all cases in the court without undue delay and in accordance with applicable time guidelines. Sup. R. 4(B). A list of particular duties is set forth by rule. *Id.*

The positions of presiding judge and administrative judge in a multi-judge court thus may, but will not necessarily, be held by the same person, and will be subject to change each calendar year. The additional $1,500 authorized by R.C. 1901.11(B)(2) is payable only when a single individual serves as both presiding judge and administrative judge of a municipal court. Therefore, in a two-judge court in any given year, the additional $1,500 might be paid to either judge or to neither judge. *See* Sup. R. 3(A)(2) ("[a] presiding judge . . . may serve as administrative judge pursuant to Sup. R. 4"); Sup. R. 4(A)(2) ("[a]n administrative judge . . . also may serve as presiding judge pursuant to Sup. R. 3"); Ohio Legislative Service Comm'n, *Summary of 1975 Enactments January – October*, 35, 39 (Am. Sub. H.B. 205) (revision to R.C. 1901.11 providing additional $1,500 for presiding judge "requires the presiding judge to serve as the administrative judge in order to receive this additional compensation").

The Ohio Supreme Court has calculated the salary of a full-time municipal court judge for the year 2005 as $105,950. *See* http://www.sconet.state.oh.us/introduction/salary/. This salary includes amounts payable from state funds pursuant to R.C. 141.04 and R.C. 1901.11(B)(1)(b) and amounts payable from the city and county treasuries pursuant to R.C. 1901.11(B)(1)(a). It is the base salary payable to every full-time municipal court judge. It does not include the additional $1,500 payable pursuant to R.C. 1901.11(B)(2) to the presiding judge of a municipal court who is also the administrative judge of the court.

Calculation of compensation of municipal court clerks

As discussed above, R.C. 1901.31(C)(2) sets the municipal court clerk's compensation at 85% of the salary of "a judge of the court." Use of the indefinite article "a" indicates that the salary intended is the salary of any judge, and that the statute refers to the base salary that each judge receives. *See Webster's New World Dictionary* 1 (2d college ed. 1978) (definitions of "a" include "each; any one"); *see also* 2004 Op. Att'y Gen. No. 2004-031 at 2-281 (discussing broad meaning of statutory use of "any," which does not permit selection or distinction); 1989 Op. Att'y Gen. No. 89-079 at 2-367 to 2-368 (same).

In contrast, R.C. 1901.11(B)(2) differentiates among judges, indicating that certain judges (those who are both the presiding judge and the administrative judge of a court) shall receive an additional $1,500 per annum. Had the General Assembly intended for the clerk to receive 85% of this $1,500, the General Assembly could easily have so stated – by mentioning in R.C. 1901.11(B)(2) the circumstances in which a clerk would receive 85% of this additional $1,500, or by referring in R.C. 1901.31 to 85% of the salary of the presiding and administrative

judge or of the highest paid judge on the court, rather than referring generally to the salary of "a judge." *See Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm'n*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the legislature intended a specific meaning, "it would not have been difficult to find language which would express that purpose"). The fact that the statute refers simply to "a judge" indicates an intent to exclude compensation granted to some but not all judges. The plain statutory language indicates, therefore, that for purposes of R.C. 1901.31(C)(2), the term "the salary of a judge of the court" refers to the base salary payable to every judge of the court pursuant to R.C. 1901.11(B)(1)(a) and (b), and does not include the additional $1500 stipend payable pursuant to R.C. 1901.11(B)(2) to the presiding judge who is also the administrative judge.

This construction of the statute is consistent with its history. At one time, two separate stipend payments were provided, one amount (initially $500 and later $1,000) for the presiding judge of the municipal court, and $1,000 for the chief justice. *See* 1951 Ohio Laws 589, 597-98 (Am. S.B. 14, filed June 14, 1951) (enacting, *inter alia*, G. C. 1591 [now R.C. 1901.11]); 1973 Ohio Laws, Part I, 1860, 1865 (Am. Sub. H.B. 578, eff. Nov. 16, 1973); *see also* 1952 Op. Att'y Gen. No. 1082, p. 18 at 18. In 1975, the position of chief justice was abolished and a single stipend payment was provided in R.C. 1901.11, as follows: "The presiding judge of a municipal court, who is also the administrative judge of the court, shall receive an additional one thousand five hundred dollars, over and above the salaries paid to any other judge of the same court." 1975-1976 Ohio Laws, Part I, 1941, 1968-69 (Am. Sub. H.B. 205, eff. Aug. 19, 1975). The term "salaries" was thus used in R.C. 1901.11 to describe the amounts paid to every judge of the court, and the amount paid only to the presiding and administrative judge was described as an "additional" amount. *See also* 1961 Op. Att'y Gen. No. 1960, p. 1 (syllabus, paragraph 3) (compensation of presiding judge of municipal court consisted of an annual amount of $500 "in addition to his base salary as judge").[5]

The statutory construction that excludes the presiding and administrative judge's stipend from the computation of the clerk's compensation is consistent also with the manner in which the statute has been construed in the past. Concluding that a municipal court judge was permitted to receive, during an existing term of office, the additional $500 compensation for presiding judge provided under newly-enacted legislation, notwithstanding the provisions of Ohio Const. art. II, § 20 prohibiting in-term increases in compensation,[6] a prior Attorney General stated: "Within

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[5] The reference in R.C. 1901.11 to salaries of other judges was deleted in 1996 and replaced with the words "per annum." 1995-1996 Ohio Laws, Part III, 4823, 4836 (Am. Sub. H.B. 438, eff. Oct. 31, 1996). This legislation also deleted longstanding provisions basing the compensation of a municipal court judge in part upon the compensation of a judge of the court of common pleas, and including as compensation a certain amount for each resident of the territory served by the court. *Id.* at 4835-36.

[6] Ohio Const. art. II, § 20 states: "The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change

the contemplation of the General Assembly, it appears that the offices of judge of the municipal court and presiding judge of such court were regarded as separate and distinct 'offices' with different duties and different terms of office." 1952 Op. Att'y Gen. No. 1082, p. 18 at 25 (approved and followed by 1961 Op. Att'y Gen. No. 1960, p. 1). The argument was that the additional compensation could be given to a judge whose term predated the legislation because the compensation was allocated to a separate office with different duties and different terms of office. *Id.* at 24 (the duties of a presiding judge "may be said to be in the nature of administrative duties within the judicial branch of government and upon his designation or selection as presiding judge, a municipal judge, heretofore elected and continuing in office during his present term, would thus be burdened with such administrative duties"); *see also* R.C. 1901.15 ("[i]n addition to the exercise of all the powers of a municipal judge, the presiding municipal judge" has other stated powers and duties); 1961 Op. Att'y Gen. No. 1960, p. 1.[7]

In accordance with this interpretation, the base salary granted pursuant to R.C. 1901.11(B)(1)(a) and (b) is viewed as salary for the position of judge of the municipal court, and the additional $1,500 as a stipend for the positions of presiding and administrative judge. Only the salary provided for holding the position of "a judge of the court" is subject to the 85% calculation for determining the compensation of the clerk of court in accordance with R.C. 1901.31(C)(2). The additional $1,500 is not part of the salary of a judge, but is additional compensation provided for the simultaneous holding of the positions of presiding and administrative judge. Under this interpretation, the clerk's compensation is based upon the base salary of a judge of the court, and not upon additional amounts paid during a particular year in which the presiding judge is also the administrative judge. This interpretation of the statutes governing the compensation of municipal court clerks has the practical effect of providing the clerk with consistent compensation from year to year, rather than varying the compensation depending upon whether a single judge is selected as both presiding judge and administrative judge in a particular calendar year.

As noted above, in a municipal court consisting of a single judge, that judge is designated as both the presiding judge and the administrative judge and, under current law, that judge is entitled to receive the additional $1,500 provided for serving in both of those positions. *See* R.C.

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therein shall affect the salary of any officer during his existing term, unless the office be abolished." This provision prohibits in-term increases or decreases in compensation. *See* 2003 Op. Att'y Gen. No. 2003-027 at 2-226.

[7] With regard to judges who take office following the enactment of the legislation, the 1952 opinion found that, even if the additional $500 were considered an increase in salary, it would be constitutional under *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E.2d 840 (1942). The 1952 opinion concluded that, where the formula for determining compensation was fixed before the assumption of the office, the actual amount of compensation received could be increased or decreased, in accordance with the statutory formula, when a judge began or ceased to serve as presiding judge. 1952 Op. Att'y Gen. No. 1082, p. 18 at 21; *see* note 8, *infra*.

1901.09(A); Sup. R. 3(A)(3) and 4(A)(3). It might be argued that, because R.C. 1901.31(C)(2) sets the clerk's compensation at a sum equal to 85% of "the salary of a judge of the court," the clerk in a single-judge court must receive 85% of the total compensation received by that court's judge (as the only judge who can be "a judge of the court"), including 85% of the additional $1,500 that the judge receives for being the presiding judge who is also the administrative judge. Under the analysis set forth above, however, the base salary paid pursuant to R.C. 1901.11(B)(1)(a) and (b) is the salary of "a judge" upon which the 85% calculation is based, and the additional $1,500 stipend is compensation for holding the positions of presiding judge and administrative judge, which is not included in the calculation of the clerk's compensation. Application of this analysis to a single-judge court, as well as to a multi-judge court, is consistent with the authorities discussed above and provides a uniform application of the municipal clerk compensation statutes here under consideration. *See generally* Ohio Const. art. II, § 26 ("[a]ll laws, of a general nature, shall have a uniform operation throughout the state"); 1990 Op. Att'y Gen. No. 90-110 at 2-490 ("R.C. 1901.31 governs the selection and compensation of municipal court clerks and deputy clerks"); 1961 Op. Att'y Gen. No. 1960, p. 1 at 5-6; *see also* Ohio Const. art. II, § 20 (quoted in note 6, *supra*); *Neff v. Bd. of County Comm'rs*, 166 Ohio St. 360, 362, 142 N.E.2d 658 (1957); 2000 Op. Att'y Gen. No. 2000-002 at 2-10 n.3.

We conclude, therefore, that the clerk of court for a municipal court governed by R.C. 1901.31(C)(2), including the Fairfield County Municipal Court, is entitled to receive as annual compensation a sum equal to 85% of the salary paid to a judge of the municipal court pursuant to R.C. 1901.11(B)(1)(a) and (b), but is not entitled to receive 85% of the additional $1,500 paid, pursuant to R.C. 1901.11(B)(2), to the presiding judge who is also the administrative judge of the court.[8]

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[8] Reaching a contrary conclusion in the instant case would raise the question whether the clerk could receive the increase in compensation during the clerk's existing term of office, or whether receiving that increase during an existing term of office would be prohibited by the constitution. *See* Ohio Const. art. II, § 20 (quoted in note 6, *supra*). The Ohio Supreme Court has found that clerks of municipal courts are officers subject to Ohio Const. art. II, § 20, and that they may not receive in-term increases in compensation resulting from direct legislative action, but may receive in-term increases resulting from a change in one of the factors used to calculate compensation, provided that the formula for calculating compensation was effective prior to the commencement of the term of office. *Schultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983); *see also* Ohio Const. art. IV, § 6(B); *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E. 2d 840 (1942); *Radel v. Wurzbacher*, No. CA-5407, 1981 Ohio App. LEXIS 13194 (Stark County Mar. 4, 1981); 2003 Op. Att'y Gen. No. 2003-014 at 2-110 n.12; 1999 Op. Att'y Gen. No. 99-033 at 2-216 to 2-218. Because of the conclusion reached in this opinion, it is not necessary to determine whether the requested increase in the municipal court clerk's compensation based upon the proposed statutory interpretation would run afoul of the constitutional prohibition against in-term changes in compensation. *See generally, e.g.*, 2000 Op. Att'y Gen. No. 2000-043; note 7, *supra*.

Explaining 1988 Op. Att'y Gen. No. 88-014 and overruling it in part

We are aware that 1988 Op. Att'y Gen. No. 88-014 might be viewed as supporting a contrary conclusion. That opinion considered the application of certain amendments enacted by Am. Sub. H.B. 171. *See* 1987-1988 Ohio Laws, Part II, 2170, 2193-95, 2225-26 (Am. Sub. H.B. 171, eff. July 1, 1987). Prior to the enactment of Am. Sub. H.B. 171, municipal court judges had been paid entirely by cities and counties, as then provided in R.C. 1901.11. Am. Sub. H.B. 171 created the state component of compensation for municipal court judges through the amendment of R.C. 141.04. *Id.* at 2194-95. The questions addressed in the 1988 opinion were whether an elected municipal court clerk whose salary was computed pursuant to the formula set forth in R.C. 1901.31(C) could receive an in-term increase due to a statutory change in the judge's salary, and whether the computation of the municipal clerk's compensation was based on the judge's total salary, including the state portion paid pursuant to R.C. 141.04, or only on the portion paid by the city and county pursuant to R.C. 1901.11.

1988 Op. Att'y Gen. No. 88-014 concluded, on the basis of *Schultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983), that no violation of the constitutional prohibition against in-term increases in compensation would result if an elected municipal court clerk received salary increases that resulted "from application of the formula contained in R.C. 1901.31(C) to increases in the salary of a municipal court judge caused by amendments to R.C. 141.04 and R.C. 1901.11." 1988 Op. Att'y Gen. No. 88-014 (syllabus, paragraph 1); *see* notes 6 and 7, *supra*. The opinion went on to conclude that "[t]he term 'salary of the judge of the court,' used in R.C. 1901.31(C) as a factor in determining the salary of the municipal court clerk, means all moneys which the municipal court judge is entitled to receive pursuant to R.C. 141.04 and R.C. 1901.11." 1988 Op. Att'y Gen. No. 88-014 (syllabus, paragraph 2).

1988 Op. Att'y Gen. No. 88-014 thus concluded that the clerk was entitled to 85% of the portion of the judge's salary paid by the state, as well as 85% of the portion of the judge's salary paid from the city and county treasuries; however, the opinion did not mention the $1,500 stipend paid to the presiding judge who is also the administrative judge. The amount of that stipend was not changed by Am. Sub. H.B. 171, and it does not appear that the opinion considered the stipend. In fact, in quoting relevant portions of R.C. 1901.11, the opinion writer omitted division (B)(3) [now R.C. 1901.11(B)(2)], which, as amended by Am. Sub. H.B. 171, stated: "The presiding judge of a municipal court who is also the administrative judge of the court, shall receive, pursuant to this section, an additional one thousand five hundred dollars over and above the salaries paid, pursuant to this section, to any other judge of the same court." 1987-1988 Ohio Laws, Part II, at 2225. The fact that this language was omitted both from the quotation and from the discussion contained in 1988 Op. Att'y Gen. No. 88-014 makes it apparent that no thought was given to whether the $1,500 paid to the presiding judge of a municipal court who is also the administrative judge of the court should be included in the 85% calculation of the clerk's compensation. Read literally, however, the second paragraph of the syllabus of 1988 Op. Att'y Gen. No. 88-014 would include this $1,500 in the amount used to determine the clerk's compensation.

The 1988 opinion focused on the question whether the clerk is entitled to receive 85% of the state component to the judge's salary, along with 85% of the city and county component of the judge's salary, and we agree that the state component is not excluded from the 85% calculation. To the extent that the language of the opinion suggests, however, that the $1,500 stipend paid to the presiding judge who is also the administrative judge is included in the calculation of the clerk's 85% of a judge's salary, 1988 Op. Att'y Gen. No. 88-014 is in error and is hereby overruled.

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, that the clerk of court for a municipal court governed by R.C. 1901.31(C)(2), including the Fairfield County Municipal Court, is entitled to receive as annual compensation a sum equal to 85% of the salary paid to a judge of the municipal court pursuant to R.C. 1901.11(B)(1)(a) and (b), but is not entitled to receive 85% of the additional $1,500 paid, pursuant to R.C. 1901.11(B)(2), to the presiding judge who is also the administrative judge of the court. (1988 Op. Att'y Gen. No. 88-014, overruled in part; 1993 Op. Att'y Gen. No. 93-059, overruled on the basis of changes in relevant statutes and rules.)

Respectfully,

JIM PETRO
Attorney General