

**OPINION 65-32****Syllabus:**

A board of county commissioners acting pursuant to Section 325.17, Revised Code, to fix the compensation of deputies, assistants and other employees of a probate court must, by reason of Section 2101.11, Revised Code, appropriate the amount deemed necessary by the judge of such court, subject to the limitation set by such section, in the absence of an abuse of discretion by such judge.

**To: George F. Burkhart, Monroe County Pros. Atty., Woodsfield, Ohio**  
**By: William B. Saxbe, Attorney General, March 9, 1965**

Your request for my opinion reads:

"1. May the salaries set by the Probate Judge for his deputies and clerks exceed, in the aggregate, the amount fixed by the Board of County Commissioners for such office?"

"Section 325.17 of the Revised Code provides that the salary fixed by certain offices including the probate judge shall not exceed the amount fixed by the Board of Commissioners for such office. Section 2101.11 of the Revised Code provides that the Judge of the Probate Court may fix the salaries and that the total compensation paid shall not exceed the total fees earned by the Court for the preceding calendar year.

"Our Probate Judge has fixed salaries for his two deputies which exceed the amount fixed by the commissioners, but is within the fees earned by the Court."

Section 325.17, Revised Code, reads in part:

"The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for each office."

The judge of the probate court is one of the officers mentioned in Section 325.27, Revised Code. It is quite clear, therefore, that the salaries of the deputies and clerks appointed by the probate judge may not exceed the total amount fixed by the board of county commissioners for that office. Section 325.17, Revised Code, however, is not the section which directs boards of county commissioners as to the amount which must be fixed for the operation of the probate court. This direction is found in Section 2101.11, Revised Code, which specifically authorizes probate judges to appoint deputy clerks, stenographers, a bailiff, and other necessary employees and then provides in part:

"Such appointees shall receive such compensation and expenses as the judge determines, and shall serve during the pleasure of the judge. The compensation of such appointee shall be paid in semimonthly installments by the county treasurer from the county

treasury, upon the warrants of the county auditor, certified to by the judge. The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the court which the judge deems necessary for the operation of the court, including the salaries of such appointees as the judge determines. The total compensation paid to the appointees in any calendar year shall not exceed the total fees earned by the court during the preceding calendar year, unless approved by the board."

The language of these two sections, when read together, manifestly places a maximum on the amount which may be paid for employees in the office of the probate judge, but such language also places upon the board of county commissioners the duty to appropriate the amount which the judge of such court deems necessary, subject only to the limitation in Section 2101.11, Revised Code.

In my opinion, the decision of the Supreme Court of Ohio in The State, ex rel. Ray, vs. South, 176 Ohio St., 241, supplies the answer to your question, although I do not find that Section 325.17, Revised Code, was considered. The syllabus reads in part:

"2. In the absence of an abuse of discretion of the part of the judge of the Probate Court in making up the annual budget, under Section 2101.11, Revised Code, the Board of County Commissioners is obligated to appropriate annually such sum of money as will meet all the administrative expenses of such court which the judge thereof deems necessary, including such salaries of court appointees as the judge shall fix and determine; provided, however, that the total compensation of such appointees in any calendar year shall not exceed the total fees earned by the court during the preceding calendar year. (State, ex rel. Motter, v. Atkinson et al., Board of County Comms. of Vinton County, 146 Ohio St., 11, approved and followed.)"

In the opinion, the Court referred to and quoted from The State, ex rel. Motter, vs. Atkinson, 146 Ohio St., 11. The Court held in that case that Section 10501-5, General Code, which has been succeeded by Section 2101.11, Revised Code, was mandatory and gave appointees of a probate court budgetary preference within the limits set by that section. The Court also stated that any hardship resulting upon other county offices by reason of such statute was a matter within the control of the General Assembly.

The language of present Section 2101.11, Revised Code, is not identical with that in Section 10501-5, General Code, but the Court held in The State, ex rel. Ray, supra, that the changes had not altered the effect of this statute and the interpretation placed on it in the Motter case, supra.

I should point out, however, that I do not look upon Section 2101.11, Revised Code, as authorizing an increase during the year in the amount fixed for the operation of a probate court; when the amount requested by the judge of

the probate court has been appropriated as directed by Section 2101.11, Revised Code, this may not then be changed for that year for which such appropriation was made.

There is nothing in your inquiry which suggests that there is any abuse of discretion in the situation you have described. In any event, this would be a question of fact and not a question upon which I could rule as a matter of law.

It is, therefore, my opinion and you are advised that a board of county commissioners acting pursuant to Section 325.17, Revised Code, to fix the compensation of deputies, assistants and other employees of a probate court must, by reason of Section 2101.11, Revised Code, appropriate the amount deemed necessary by the judge of such court, subject to the limitation set by such section, in the absence of an abuse of discretion by such judge.