

OPINION NO. 85-070**Syllabus:**

The amount set forth in R.C. 507.09(C) as the maximum compensation which a township clerk may receive in any one calendar year applies only to the amount paid to the clerk by the township under R.C. 507.09(C), and not to any amount which may be paid to the clerk by the township under R.C. 507.09(A)(4). A township with a budget of five thousand dollars or over shall pay its clerk the compensation provided by R.C. 507.09(C) and may, in addition, make payment for services under R.C. 507.09(A)(4), so that the total amount paid to the clerk by the township in any one calendar year may exceed the amount set forth in R.C. 507.09(C).

To: James S. Rapp, Hardin County Prosecuting Attorney, Kenton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 29, 1985

I have before me your request for my opinion in which you ask whether a township may, under R.C. 507.09(A)(4), pay its clerk amounts in excess of those authorized by R.C. 507.09(C). It is my understanding that your question arises from a situation in which a particular township did provide its clerk with compensation exceeding the amount permitted under R.C. 507.09(C).

In order to answer your question I must examine the applicable statute. R.C. 507.09 states:

(A) The township clerk shall be entitled to the following fees, to be paid by the parties requiring the service:

(1) Ten cents for each hundred words of record required in the establishment of township roads which are to be opened and repaired by the parties;

(2) Ten cents for each hundred words of records or copies of record in matters relating to partition fences, but not less than twenty-five cents for any one copy, to be paid from the township treasury;

(3) Ten cents for each hundred words of record required in the establishment of township roads which are to be opened and kept in repair by the township highway superintendent;

(4) For keeping the record of proceedings of the board of township trustees, stating and making copies of accounts and settlements, attending suits for and against the township, and for any other township business the board requires him to perform, such reasonable compensation as it allows.

(B) In those townships having a budget of less than five thousand dollars, the board shall determine the salary of the clerk, which in no event shall exceed one thousand five hundred dollars per year.

(C) In townships having a budget of five thousand dollars or over, the clerk shall receive three percent of the total expenditures of such township in excess of five thousand dollars in addition to the amount provided under division (B) of this section. No township clerk shall receive compensation in excess of the following amounts in any one calendar year for said services as such clerk:

(1) In townships having a budget of from five thousand to fifty thousand dollars, two thousand eight hundred fifty dollars;

(2) In townships having a budget of more than fifty thousand but

not more than one hundred thousand dollars, four thousand three hundred fifty dollars;

(3) In townships having a budget of more than one hundred thousand but not more than two hundred fifty thousand dollars, six thousand dollars;

(4) In townships having a budget of more than two hundred fifty thousand but not more than seven hundred fifty thousand dollars, eight thousand dollars;

(5) In townships having a budget of more than seven hundred fifty thousand but not more than one million five hundred thousand dollars, ten thousand dollars;

(6) In townships having a budget of more than one million five hundred thousand dollars, twelve thousand dollars.

(D) The compensation of the township clerk shall be paid in equal monthly payments with any necessary adjustments for the year to be made in the December payment. If the office of clerk is held by more than one person during any calendar year, each person holding the office shall receive payments for only those months, and any fractions thereof, during which he holds the office. (Emphasis added.)

R.C. 507.09(A) provides that the township clerk is entitled to receive certain fees from parties requiring particular services. Among those fees is such reasonable compensation as may be allowed by the board of township trustees for keeping the record of proceedings, stating and making copies of accounts and settlements, attending suits, and performing other township business as required by the board. R.C. 507.09(A)(4). R.C. 507.09(B) provides that, in a township having a budget of less than five thousand dollars, the board of township trustees shall set the salary of the clerk at an amount not in excess of \$1,500. R.C. 507.09(C) provides that, in townships with larger budgets, the clerk shall receive \$1,500 plus three percent of the expenditures of the township in excess of \$5,000. See 1959 Op. Att'y Gen. No. 322, p. 178; 1952 Op. Att'y Gen. No. 1540, p. 469. See generally State ex rel. Ryland v. Schinkal, 49 Ohio St. 2d 1, 358 N.E.2d 631 (1976); 1979 Op. Att'y Gen. No. 79-044. R.C. 507.09(C) also contains a specific limitation on the amount of compensation which the clerk may receive, depending upon the budget of the township, stating expressly: "No township clerk shall receive compensation in excess of the following amounts in any one calendar year for said services as such clerk." Your question is whether the limitation contained in R.C. 507.09(C) applies only to the amount paid by the township to the clerk under R.C. 507.09(C), or whether it applies to the total amount paid by the township to the clerk in any one calendar year under R.C. 507.09(A)(4) and R.C. 507.09(C).

The structure of R.C. 507.09 suggests that the limitation appearing in R.C. 507.09(C) applies only to the amount paid pursuant to that division. See R.C. 1.42; R.C. 1.47. The limits set forth in R.C. 507.09(C) apply to townships with budgets of varying amounts, beginning with five thousand dollars, thereby indicating that they are to take effect in townships whose budgets exceed those covered by R.C. 507.09(B), to limit the maximum amounts which may be paid under the percentage allowance provided by R.C. 507.09(C).

It might be argued that the reference in R.C. 507.09(C) to "said services as such clerk" encompasses all services of the clerk referenced in the statute, including those covered by R.C. 507.09(A)(4). I believe, however, that "said services" may more appropriately be considered to consist of the services performed by the clerk in connection with the expenditures of the township. See, e.g., R.C. 507.07; R.C. 5705.01(D) (designating the township clerk as the fiscal officer of a township); 1954 Op. Att'y Gen. No. 3525, p. 59. The history of R.C. 507.09 supports this conclusion. See R.C. 1.49. Prior to 1923, Ohio townships had both clerks and treasurers. The clerks received fees essentially as currently set forth in R.C. 507.09(A), and the treasurers received a percentage of moneys paid out by them upon the order of the township trustees. Maximum dollar limitations applied to the amounts which either the clerk or the treasurer could receive from the township treasury. See 1917 Ohio Laws 651-52 (H.B. 406, amending G.C. 3308, 3318). In 1923, the General Assembly eliminated the position of township treasurer and imposed upon the clerk the duties which had been required of the treasurer.

See 1923 Ohio Laws 30 (H.B. 43); 1954 Op. No. 3525. At that time, no additional compensation was provided to the clerk for performing the duties which had previously been performed by the treasurer. In 1939, however, G.C. 3308, the provision governing the compensation of the clerk, was amended to read as follows:

The clerk shall be entitled to the following fees, to be paid by the parties requiring the service: twenty-five cents for recording each mark or brand; ten cents for each hundred words of record required in the establishment of township roads, to be opened and repaired by the parties; ten cents for each hundred words of records or copies in matters relating to partition fences, but not less than twenty-five cents for any one copy, to be paid from the township treasury; ten cents for each hundred words of record required in the establishment of township roads, to be opened and kept in repair by the superintendents; for keeping the record of the proceedings of the trustees, stating and making copies of accounts and settlements, attending suits for and against the township, and for any other township business the trustees require him to perform, such reasonable compensation as they allow. Provided, however, in those townships having a budget less than five thousand dollars, the township trustees shall determine the salary of the clerk which in no event shall exceed three hundred and fifty dollars per year; and in townships having a budget of five thousand dollars or over, the clerk shall receive two percent of the total expenditures of such township in excess of five thousand dollars in addition to the amount above provided in townships having a budget of less than five thousand dollars, provided, however, no township clerk shall receive for his compensation in excess of six hundred dollars in any one calendar year for said services as such township clerk.

1939 Ohio Laws 575-76 (H.B. 477) (emphasis added). See generally 1948 Op. Att'y Gen. No. 2805, p. 99.

In the 1939 version of the statute governing the clerk's compensation, the limitation on compensation of the clerk appeared as an addendum to the language which granted the percentage allowance of township expenditures. It appears from the fact that the limitation was part of the sentence granting such allowance that the limitation did not refer back to amounts allowed to the clerk under the first sentence of the section. The words "said services" were evidently used to distinguish between services which had always been those of the clerk (currently covered by R.C. 507.09(A)) and services which had previously been those of the treasurer (currently covered by R.C. 507.09(B) and (C)). See 1950 Op. Att'y Gen. No. 1602, p. 161 (concluding that the intent behind the percentage allowance for township clerks was that the clerks be compensated in proportion to the amount of work involved in the performance of their duties, on the basis that, when more money is expended, a greater number of creditors will ordinarily have been paid); 1954 Op. No. 3525; 1944 Op. Att'y Gen. No. 6612, p. 17. Although a number of amendments have been made to R.C. 507.09, the distinction between compensation from the township to the clerk for clerical services (R.C. 507.09(A)(4)) and compensation from the township to the clerk for fiscal services (R.C. 507.09(B) and (C)) remains in the current statute.

The history of R.C. 507.09 thus shows that the General Assembly established a compensation system for township clerks which consisted of fees for clerical duties, as well as salaries and percentage allowances for fiscal duties, with a statutory limit on the amount of allowances. Over the years the amounts of compensation were changed and certain amendments were made to the statute; however, the basic system, including the limitation on allowances, remained intact. "As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system," unless a different purpose is plainly shown. United States v. Jefferson Electric Manufacturing Co., 291 U.S. 386, 396 (1934). Thus, notwithstanding the various amendments to R.C. 507.09, the provision in the

statute concerning limitation on compensation should be read so as to apply only to allowances, as the system was initially established.

Support for this conclusion is found in a recent legislative analysis of R.C. 507.09. The analysis of Sub. H.B. 188, 114th Gen. A. (1981) (eff. Nov. 5, 1981) (as reported by S. Local Government, Urban Affairs, and Sm. Business), prepared by the Ohio Legislative Service Commission, states, at 3:

In addition to certain fees paid to the township clerk by parties requiring particular services, each township clerk receives an annual salary, determined by a statutory formula or set by the township trustees within a statutory maximum, for services rendered to the township. . . Existing law establishes a maximum amount a clerk can receive in any single year under this formula, based on the size of the township's annual budget. (Emphasis added.)

See R.C. 1.49; Meeks v. Papadopoulos, 62 Ohio St. 2d 187, 404 N.E.2d 159 (1980) (legislative analysis may be used for purpose of statutory construction). The legislative analysis indicates that the legislature intended to retain the original system for compensation of township clerks whereby fees were treated differently than salaries and percentage allowances. Further, the analysis shows that under the statute the maximum amount of allowance that a clerk may receive is subject to the statutory limitation, but no such limitation is imposed on fees.

It is my understanding that, since 1939, a number of townships have given the provisions governing compensation of township trustees the construction set forth in this opinion. See generally 1959 Op. Att'y Gen. No. 145, p. 67; 1952 Op. No. 1540; 1944 Op. No. 6612. But see generally 1921 Op. Att'y Gen. No. 1823, p. 86 (concluding that, under statutes then in effect, the limitation on compensation for a township clerk included all amounts paid from the township treasury). When a statute is susceptible of more than one construction, practical results may be given consideration to determine the intent of the legislature, so as to avoid, if practicable, an anomalous distinction or result which should not be accorded the statute except by clear and explicit legislative enactment. See R.C. 1.49; Rarey v. Schmidt, 115 Ohio St. 518, 154 N.E. 914 (1926). Had the General Assembly, over the course of those years, intended to modify the practice of permitting township clerks to receive under the language now appearing in R.C. 507.09(A)(4) amounts in excess of those permitted under R.C. 507.09(C), it could easily have enacted language clearly providing for such a change. It did not do so.

Therefore, it is my opinion, and you are advised, that the amount set forth in R.C. 507.09(C) as the maximum compensation which a township clerk may receive in any one calendar year applies only to the amount paid to the clerk by the township under R.C. 507.09(C), and not to any amount which may be paid to the clerk by the township under R.C. 507.09(A)(4). A township with a budget of five thousand dollars or over shall pay its clerk the compensation provided by R.C. 507.09(C) and may, in addition, make payment for services under R.C. 507.09(A)(4), so that the total amount paid to the clerk by the township in any one calendar year may exceed the amount set forth in R.C. 507.09(C).