

5951

1. JUSTICES OF PEACE—SALARY SHOULD BE PAID FROM COUNTY TREASURY AS ARE OTHER CLAIMS AGAINST COUNTY—SECTION 1907.47 RC.
2. CLAIM FOR SALARY MAY BE ALLOWED BY COUNTY COMMISSIONERS—AT SUCH INTERVALS AS COMMISSIONERS MAY DETERMINE—SECTION 307.55 RC.
3. SALARY FOR JUSTICES OF PEACE—PROVISION MADE IN SECTION 1907.47 RC—MAY INCLUDE ALLOWANCE FOR SUPPLIES AND SUCH ITEMS—NOT NECESSARY COUNTY COMMISSIONERS IN FIXING SALARY DESIGNATE SEPARATELY AMOUNT ATTRIBUTABLE TO THE ALLOWANCE—AGGREGATE AMOUNT OF SALARY—OFFICERS REQUIRED TO EXPEND AMOUNTS TO DEFRAY COST OF NECESSARY SUPPLIES, FORMS AND EQUIPMENT.

SYLLABUS:

1. The salary provided for justices of the peace in Section 1907.47, Revised Code, should be paid from the county treasury as are other claims against the county.
2. Claims for such salary may be allowed by the county commissioners as provided in Section 307.55, Revised Code, at such intervals as the commissioners in their discretion may determine.
3. The salary for justices of the peace for which provision is made in Section 1907.47, Revised Code, may *include* an allowance for supplies, etc., and it is not necessary that the county commissioners, in fixing such salary, designate separately the amount thereof attributable to such allowance. From the aggregate amount of salary so fixed and paid to justices of the peace such officers are required to expend amounts sufficient to defray the cost of necessary supplies, forms, and equipment.

Columbus, Ohio, November 18, 1955

Hon. James H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I received your recent opinion No. 5805 with regard to the changes in the law relating to justices of the peace, and there

are still some unanswered questions with regard to compensation for them and I would appreciate receiving your opinion on the following matters :

"1. R. C. 1907.47 provides that the salary of the justices of the peace shall be determined by the Board of County Commissioners in which such offices of the justices of the peace is situated, but does not state by whom such salary is to be paid. Can it legally be assumed from this provision of law that the County Commissioners are to pay the salary, or is there some other provision of law which stipulates by whom the salaries are to be paid?

"2. Does the provision of R. C. 1907.47 that 'The justices of the peace shall receive a fixed annual salary' require that such salary be paid annually or may it be paid in some other manner?

"3. Does the provision of R. C. 1907.47 that the fixed annual salary of the justices of the peace 'may include an annual allowance for supplies, forms and equipment' require that such allowance be considered in fixing the total annual salary and that upon payment of such annual salary the justices may or may not expend any part thereof for supplies, forms and equipment or should such annual allowance be fixed separately and used only for the purposes designated?"

As to your first question, it would appear that Section 1907.47, Revised Code, is the only express statutory reference to the provision of a salary for justices of the peace. However, it may be noted that under the provisions of Section 307.55, Revised Code, it is the function of county commissioners to approve the allowance of claims against the county, and this circumstance is strongly indicative of a legislative intent that in fixing the annual salary as provided in Section 1907.47, *supra*, the commissioners are acting to fix the rate of a continuing allowance against the county.

This view is supported by the fact that in Sections 1907.32, 1907.33 and 1907.34, Revised Code, as amended in Amended Senate Bill No. 319, the same enactment in which Section 1907.47, *supra*, is set out, all fees collected by justices of the peace, with the exception of those received for performing the marriage ceremony, are to be paid monthly to the general fund of the county. It would seem, therefore, to be the legislative purpose that the fees thus paid into such fund would substantially offset payments therefrom by way of salaries to the officers concerned. For these reasons I conclude that the salary for which provision is made in Section 1907.47,

Revised Code, should be paid from the general fund of the county concerned.

In reaching this conclusion I am not unmindful of the rule stated in *State ex rel. Bentley Co. v. Pierce*, 96 Ohio St., 44, as follows:

“3. In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

It is to be borne in mind, however, that the chief legislative purpose in the provision of a salary for justices of the peace was indubitably to avoid the constitutional objection to the present fee system as pointed out by Chief Justice Taft in *Tumey v. Ohio*, 273 U. S., 510; 73 L. Ed., 749 (1927). One of the headnotes in this decision, as reported in 73 L. Ed., is as follows:

“2. An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him.”

It is a well established rule of statutory construction that the interpretation of a statute in such a way as to render its provisions wholly nugatory is the last extremity to which the courts should go. See 37 Ohio Jurisprudence, 614, Sec. 339. There is even stronger reason for the application of this rule in the case of an interpretation by an officer of the executive branch of the government; and it being clear that if the salary here in question cannot be paid from the county treasury it cannot be paid at all, any ruling that it is not a charge upon such treasury would quite clearly render this section without legal effect and so defeat the plain legislative purpose noted above.

Accordingly, in spite of the strict rule by which the authority to expend county funds is measured, I am impelled to conclude that the salary of these officers may properly be paid as are other claims against the county.

Coming to your second question, it would appear that in the expression “fixed annual salary,” the word “annual” is indicative of a yearly *rate* of payment rather than a requirement that a single payment be made each year. See *Marion County Fiscal Court v. Kelly*, 56 S. W., 815; 22 Ky. Law Rep., 174.

The statute does not specify, of course, at what intervals this salary is to be paid at the rates fixed by the commissioners, nor is it possible to suppose that the provisions of Chapter 325., Revised Code, would apply since these provisions appear to be limited to the compensation of officers therein expressly designated. In this situation I am impelled to the view that such compensation should be paid as are other miscellaneous claims against the county as provided in Section 307.55, Revised Code. This section reads:

“No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.

“No public money shall be disbursed by the board or any of its members, but shall be disbursed by the county treasurer, upon the warrant of the auditor specifying the name of the party entitled to such money, on what account, and upon whose allowance, if not fixed by law.”

Under these provisions it would appear to rest within the discretion of the commissioners to determine at what intervals salary claims of justices might be presented and allowed.

As to your third question it will be observed that the language of Section 1907.47, Revised Code, quite clearly provides that the “salary” therein fixed “may *include* a fixed annual allowance for supplies, forms, and equipment.” If such allowance is *included* in the salary it must necessarily follow that the officers concerned are to receive such salary, including such allowance, in cash; and that they will then be under the duty to utilize such portion thereof as may be necessary to procure supplies, etc. In this connection it would not appear to be necessary under the statute for the commissioners to fix separate amounts as (1) salary and (2) allowance for supplies, etc., but they may give consideration to the officer’s needs as to supplies, etc., in determining the aggregate annual amount he is to be paid as salary.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The salary provided for justices of the peace in Section 1907.47, Revised Code, should be paid from the county treasury as are other claims against the county.

2. Claims for such salary may be allowed by the county commissioners as provided in Section 307.55, Revised Code, at such intervals as the commissioners in their discretion may determine.

3. The salary for justices of the peace for which provision is made in Section 1907.47, Revised Code, may include an allowance for supplies, etc., and it is not necessary that the county commissioners, in fixing such salary, designate separately the amount thereof attributable to such allowance. From the aggregate amount of salary so fixed and paid to justices of the peace such officers are required to expend amounts sufficient to defray the cost of necessary supplies, forms and equipment.

Respectfully,

C. WILLIAM O'NEILL

Attorney General