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TOWNSHIP CLERK — COMPENSATION — §507.09 RC — APPOINTMENT FOR A VACANCY — DETERMINATION OF APPROPRIATE COMPENSATION.

SYLLABUS:

1. Where a board of township trustees has fixed at \$500.00 annually, that portion of the salary of the township clerk authorized by Division (B) of Section 507.09, Revised Code, and such clerk has actually been paid prior to his death the maximum salary authorized annually by Division (C) of Section 507.09, Revised Code, the person appointed to fill the vacancy created by the death of such clerk is entitled to be paid a pro-rata share of such \$500.00 annual salary and in addition thereto, the percentage of expenditures during his term under the formula provided in Division (C) of Section 507.09, Revised Code.

2. An individual appointed to fill a vacancy in the office of township clerk is entitled to receive compensation subject to the \$2400.00 limitation provided in Section 507.09, Revised Code, without regard to the circumstance that such compensation, combined with that of his predecessor, will in the aggregate exceed such maximum within a calendar year.

Columbus, Ohio, December 17, 1957

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The present Clerk of Oregon Township, Lucas County, has been serving in office since approximately September 1, 1957, having been appointed to fill a vacancy caused by the death of the previous Clerk. The present Clerk will serve until the November 5, 1957 election at which time the Township will become incorporated. The Township expects to spend approximately \$50,000.00 during the two and a fraction months that the Clerk will be in office. This expenditure is due to the fact that Township business is now being wound up.

"How much is the Clerk to be compensated for his services? Is he to receive 2% of the amount spent during his term (the \$5,000.00 base having already been exceeded) plus a pro-rata share of \$500.00? (The Board of Trustees has established \$500.00 as the Clerk's yearly salary.) This would amount to compensation of about \$1,100.00, and would seem to be in line with the reasoning in an earlier opinion letter (1944 OAG 6612). Or, is the Clerk's compensation to be pro-rata share of the \$2,400.00 maximum set out in Section 507.09 of the Revised Code?"

The compensation of a township clerk is fixed by Section 507.09, Revised Code, which reads in pertinent part:

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

"(C) In townships having a budget of five thousand dollars or over, the clerk shall receive two per cent 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 twenty-four hundred dollars in any one calendar year for said services as such clerk."

Inasmuch as the trustees of Oregon Township have fixed the clerk's salary at \$500.00 per annum it is apparent that in answer to your first

question, the present clerk should receive a pro-rata share of that amount and, in addition, 2% of all moneys spent during his incumbency, the \$5,000.00 total having been exceeded during the term of his predecessor.

This conclusion is strengthened by an opinion of one of my predecessors in Opinion No. 6612, Opinions of the Attorney General for 1944, page 17, at page 22, where it is stated:

“* * * Likewise, it would be absurd, in my opinion, to contend that if incumbent No. 1 had, during the first half of a calendar year, drawn a percentage based on an excess of expenditures over five thousand dollars, then his successor must wait until another five thousand dollars of expenditures had accumulated before he could receive a percentage compensation. The statute plainly negatives such an idea. Five thousand dollars is the total township expenditure which is not subject to the two per cent and all over that amount is the excess on which the clerk is to receive two per cent. * * *”

Accordingly, in answer to your first question, it is my opinion and you are advised that where the board of township trustees has fixed the township clerk's salary at \$500.00 and the \$5,000.00 base has been exceeded prior to the death of the clerk, the person appointed to fill the vacancy created by the death of such clerk is entitled to receive pro-rata share of the \$500.00 salary fixed by the board of township trustees and in addition thereto, 2% of the amount spent during his term.

Your second question presents the problem of whether the \$2,400.00 maximum provided by Section 507.09, Revised Code, quoted above, places a limit for compensation upon the office or upon the individual who might hold that office.

In the 1944 opinion above referred to, that same question was presented my predecessor in interpreting Section 3308, General Code, Section 507.09, Ohio Revised Code, stated at page 23.

“* * * The statute which I have been considering uses the language—‘No township clerk shall receive for his compensation in excess’, etc. This is a limitation not on the office but upon ‘any’ or ‘every’ clerk, and falls clearly within the reasoning of the opinion above quoted. I am of the opinion, therefore, that, subject to the basis of computation previously outlined herein, each of the incumbents of the office of clerk during a given year would have the right to receive compensation up to a maximum of \$600.00 * * *”

It should be noted that the last paragraph of Section 507.09, Revised

Code, differs somewhat in language in that the words "for his" have been deleted. This difference would not impel me to a different conclusion.

I am further strengthened in my opinion by the holding of another of my predecessors who in Opinion 3014, Opinions of the Attorney General for 1931, page 339, held as follows:

"The amount earned by the predecessor of a person appointed to fill a vacancy in the office of township trustee shall not be taken into consideration in determining whether the \$250.00 yearly limitation of a township trustee's compensation to be paid from the township has been exceeded."

Thus it appears that the maximum limit upon a clerk's compensation is not subject to be pro-rated, because it is a limitation upon the person and not upon the office.

Accordingly, in answer to your second question, it is my opinion and you are advised that a person appointed to fill a vacancy in the office of township clerk is entitled to receive compensation subject to the \$2,400.00 maximum provided by Section 507.09, Revised Code, without regard to the circumstance that his own and his predecessor's combined compensation will exceed such maximum in a single calendar year.

In specific answer to your query therefore, it is my opinion:

1. Where a board of township trustees has fixed at \$500.00 annually, that portion of the salary of the township clerk authorized by Division (B) of Section 507.09, Revised Code, and such clerk has actually been paid prior to his death the maximum salary authorized annually by Division (C) of Section 507.09, Revised Code, the person appointed to fill the vacancy created by the death of such clerk is entitled to be paid a pro-rata share of such \$500.00 annual salary and in addition thereto, the percentage of expenditures during his term under the formula provided in Division (C) of Section 507.09, Revised Code.

2. An individual appointed to fill a vacancy in the office of township clerk is entitled to receive compensation subject to the \$2400.00 limitation provided in Section 507.09, Revised Code, without regard to the circumstance that such compensation, combined with that of his predecessor, will in the aggregate exceed such maximum within a calendar year.

Respectfully,
WILLIAM SAXBE
Attorney General