

Note from the Attorney General's Office:

1980 Op. Att'y Gen. No. 80-054 was overruled by
1990 Op. Att'y Gen. No. 90-023.

OPINION NO. 80-054**Syllabus:**

A sheriff, engineer, coroner, recorder, prosecuting attorney or clerk of the court of common pleas serving a four-year term of office is entitled to an amount equal to four times his annual salary, despite the fact that the number of days in his term of office may not coincide with mathematical precision to the number of days in four calendar years. (1941 Op. Att'y Gen. No. 3955, p. 529 approved and followed.)

To: Richard B. Hauser, Huron County Pros. Atty., Norwalk, Ohio
By: William J. Brown, Attorney General, September 11, 1980

I am in receipt of your letter of July 30, 1980, in which you request my opinion as follows:

On the first Monday in January, 1977, (January 3, 1977) a new term of office began for the county offices of Sheriff, Coroner, Clerk of Courts, Engineer, Prosecuting Attorney and Recorder. Said term was to run until the first Monday in January, 1981 (January 5, 1981). Ohio Revised Code Sections 325.01 through 325.11 [prescribed] an annual compensation to be paid these officials.

Is the total salary for this 4 year 2 day term of office to be the amount [prescribed] by 325.01 [et seq.] times 4 years, or is it to be the amount [prescribed] by 325.01 times 4 years plus a 2 day per diem rate?

If there is to be a 2 day additional per diem pay how should it be computed?

You have specifically requested that I render a formal opinion in response to this inquiry.

In 1941 Op. Att'y Gen. No. 3955, p. 529, a prior Attorney General, when presented with a similar question concerning the compensation of the clerk of the court of common pleas, concluded that the elective officers of a county "are to receive four full annual salaries for a period commencing on the first day of their term and ending on the same day four years thereafter, even though such period may be greater or less than four full calendar years." The fact that in 1941 county officers were paid monthly rather than biweekly does not affect the reasoning of 1941 Op. No. 3955. See R.C. 325.01; R.C. 325.17 ("[t]he amount of biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such employee would receive if he were paid semimonthly").

1941 Op. No. 3955 specifically dealt only with the office of clerk of the court of common pleas; however, there is no appreciable difference with regard to salary schedule and term of office between the clerk of the court of common pleas and the sheriff, coroner, engineer, recorder and prosecuting attorney. Each individual is elected for a four-year term of office, see R.C. 309.01, 311.01, 313.01, 315.01, 317.01 and 2303.01, and is paid an annual salary which is set by statute, see R.C. 325.06, 325.08, 325.09, 325.11, 325.14 and 325.15. Consequently, the conclusion of 1941 Op. No. 3955 that a person serving a four-year term is entitled to four full annual salaries is applicable to all of the officers you have named.

Therefore, it is my opinion, and you are advised, that a sheriff, engineer, coroner, recorder, prosecuting attorney or clerk of the court of common pleas serving a four-year term of office is entitled to an amount equal to four times his annual salary, despite the fact that the number of days in his term of office may not coincide with mathematical precision to the number of days in four calendar years. (1941 Op. Att'y Gen. No. 3955, p. 529 approved and followed.)