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GENERAL ASSEMBLY—WHERE MEMBER DECEASED DURING TERM OF OFFICE—ANY UNPAID SALARY SHALL BE PAID TO DEPENDENTS—SECTION 50 G. C.

SYLLABUS:

Where a member of the General Assembly dies during his term of office any unpaid salary of such deceased member shall be paid to his dependents as provided in Section 50 of the General Code of Ohio.

Columbus, Ohio, March 29, 1949

Hon. Joseph T. Ferguson, Auditor of State  
Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"This office is in receipt of a voucher certified by the House of Representatives, and payable to the widow of Paul R. Barnes, deceased, former employe of said House, covering the month of January, 1949, in the gross amount of \$350.00.

The facts in relation to this matter disclose that under date of January 3, 1949, as may be seen on pages 6 and 7 of the House Journal of the said date, the said House accepted the said certificate and oath of office of Mr. Barnes, which had been executed under date of December 30, 1948. The facts further disclose that Mr. Barnes died on January 2, 1949.

In view of the foregoing, is the widow of Mr. Barnes legally entitled to receive the unpaid balance, or total, of Mr. Barnes' salary as a member of the House of Representatives, for the term 1949-1950?"

Article II, Section 1 of the Constitution of Ohio reads in part as follows:

"The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives \* \* \*."

Article II, Section 2 of the Constitution of Ohio reads as follows:

"Senators and representatives shall be elected biennially by the electors of the respective counties or districts, on the first Tuesday after the first Monday in November; their term of office shall commence on the first day of January next thereafter, and continue two years."

In conformity with the power vested in the legislature of the State of Ohio it proceeded to enact Section 50 of the General Code, which was amended, effective September 30, 1947, and reads in part as follows:

"Every member of the general assembly shall receive as compensation a salary of two thousand six hundred dollars a year during his term of office. Such salary for such term shall be paid

in the following manner: Three hundred and fifty dollars in monthly installments during the first session of such term and the balance in equal monthly installments during the remainder of such term. All monthly payments hereunder shall be made on or before the fifth day of each and every month. In case of the death of any member of the general assembly during his term of office, any unpaid salary due such member for the remainder of his term shall be paid to his dependent, surviving spouse, children, mother, father in the order in which the relationship is herein set forth in monthly installments as provided in this act. \* \* \*

I quote the following from 32 O. Jur. Section 186:

“Commencement of Term.—As a general proposition, the term of office may be said to commence only from the time that the right to enter upon its duties begins.

The commencement of the term of office is usually fixed by the constitutional provision or the statutes governing the particular office; and when a date is mentioned, the term of office begins on such day. Where no time is fixed by law for the commencement of an official term, however, it begins to run from the date of the appointment, or, in the case of an elective office, according to the general rule followed by the Ohio courts, it starts from the date of the election, unless it is apparent that the predecessor has been elected for a full term which has not yet expired, in which case it seems that the term does not begin at once. The reason for not concluding that the term begins on the qualification of the officer is found, apparently, in the possibility that under such a rule the beginning of an official term would depend on the will of the person elected or appointed, rather than on that of the electing or appointing body. \* \* \*

The decision in *State, ex rel. Votava v. Brown*, 11 O. C. C. (N. S.) 107, affirmed without opinion in 78 O. S. 452, is in conformity with the rule above quoted.

In 46 C. J., Page 965, Section 104d, it is stated:

“The term of office begins from the time, if any, fixed by law, not necessarily from the date of appointment or qualification.”

In the first paragraph of your request above quoted you refer to Paul R. Barnes, deceased, as a former employee of said House. However, in the second paragraph, following such reference, you speak of Mr. Barnes as a member of the House of Representatives. Therefore, for the purposes of making definite and certain, I am presuming that Mr. Barnes

was a member of the House of Representatives and his certificate of election and his oath of office were based upon his election on November 2, 1948, as a member of the House of Representatives of the state of Ohio from Franklin county. His certificate of election was accepted as evidence of his membership in the General Assembly of Ohio as of January 1, 1949. It is immaterial whether such certificate was accepted during his lifetime or not. The statute fixed his term of office as beginning on the first day of January, 1949, and being alive on that day and for some hours thereafter he entered on the term of such office and his salary began at the time his term of office began.

Therefore, specifically answering your question, it is my opinion that under the provisions of Section 50 of the General Code of Ohio, which is in full force and effect, the widow of Paul R. Barnes, deceased, is entitled to receive any unpaid salary for the term to which he was elected and which was not paid to him prior to his death.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.