

**OPINION NO. 70-142****Syllabus:**

1. The board of county commissioners may increase but not decrease the annual amount of additional compensation to county court judges as provided in Section 1907.082, Revised Code.

2. Amounts of additional compensation must be paid uniformly to all county court judges within a county district.

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**To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio**  
**By: Paul W. Brown, Attorney General, October 15, 1970**

I have before me your opinion request, wherein you ask the following question:

"May the County Commissioners decrease compensation under 1907.082 with the apparent intent to more or less equalize the total compensation of both Judges, or must each Judge regardless of the compensation under 1907.081 receive the identical amount of additional compensation under 1907.082? Or to put the matter more simply, May the County Commissioners reduce additional compensation under R.C. 1907.-082 to one County Court Judge in a District at the end of his term and not the other County Court Judge in the same District who is in mid-term and has two (2) years to continue under his term?"

As I read your request there are really two questions which must be answered. The first of these questions is whether the

board of county commissioners may decrease additional compensation to county court judges during term. Secondly, whether the amount of additional compensation granted to one county court judge must be uniformly granted to all other county court judges within the county district.

Section 1907.082, Revised Code, provides:

"In addition to the compensation provided in section 1907.081 [1907.08.1] of the Revised Code, the board of county commissioners may provide for payment of a fixed annual amount, not to exceed two thousand dollars, to each county court judge."

Section 1907.081, Revised Code, referred to in the above section reads:

"Judges of the county court shall receive as compensation three thousand dollars per annum plus an additional amount equal to six cents per capita of the population of the county court district as determined by the last federal decennial census. Such additional amount shall not exceed the sum of three thousand dollars per annum.

"The compensation of judges of the county court shall be paid in semimonthly installments payable from the treasury of the county in which the court is situated.

"A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office."

The provisions of these sections were considered in my Opinion No. 70-047, Opinions of the Attorney General for 1970. My answer to this opinion request involved the consideration of my Opinion No. 70-046, Opinions of the Attorney General for 1970, of the case of Young v. Price, (unreported), Common Pleas Court of Franklin County, Ohio, Case No. 236,620, (1969), and with regard to Section 20, Article II of the Ohio Constitution. Section 20, supra, provides as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

The case of Young v. Price, supra, establishes precedent for the entitlement of county court judges to receive additional compensation during term in office as provided for in Section 1907.082, Revised Code. In his decision Judge Holden stated that Section 20, Article II, of the Ohio Constitution, imposes a duty upon the legislature to fix the term of office and compensation of officers whose term of office and compensation is not set by the Ohio Constitution. On page 2 of his decision, Judge Holden writes:

"The authority of Amended Section 6 of Article IV of the Ohio Constitution and the electors who

ratified the amendment specifically set the terms of office of all judges and their compensation to such an extent as to obviate the applicability of the provisions of Section 20, Article II, to any judge's term of office or salary."

Judge Holden specifically refers to amended Section 6(A)(4) of Article IV, Ohio Constitution, which provides in part that the "terms of office of all judges shall begin on the days fixed by law, and laws shall be enacted to prescribe the times and mode of their election." (Emphasis added.) He also refers to amended Section 6(C) of Article IV which provides for the assignment of retired judges to active duty and sets their compensation, stating that a judge "while so serving shall receive the established compensation for such office, computed upon a per diem basis, in addition to any retirement benefits to which he may be entitled." It is apparent that the amended Sections 6(A)(4) and 6(C), *supra*, are constitutional provisions which remove Sections 1907.081 and 1907.082, *supra*, from the restrictive language in Section 20, Article II, Ohio Constitution.

Support for this conclusion appears in the case of Blacker v. Wieth, 16 Ohio St. 2d 65 (1965), in which the court, on page 69, wrote:

"The government of a county necessarily includes the power to fix the salary of its officers. Thus, in providing for the government of counties, the General Assembly may, under Section 1 of Article X of the Ohio Constitution, authorize the board of county commissioners to fix the salary of a county officer; and, in a case where it does so and the board of county commissioners has fixed such salary, such case is one 'provided for in' the Ohio Constitution, within the meaning of those words as used in Section 20 of Article II thereof."

In City of Mansfield v. Endley, 38 Ohio App. 528, at 538 (1931), which was affirmed in 124 Ohio St. 652, the court states:

"It is explicitly recognized that a later Constitutional Amendment may transform a case not provided for into one provided for in the Constitution."

It is well established that Amended Section 6, *supra*, removes Section 1907.082, Revised Code, from the restrictive language of Section 20, Article II, of the Ohio Constitution, and that increases in additional compensation may be made to county court judges during the term. (See Opinion No. 70-047, Opinions of the Attorney General for 1970). The question remains, however, whether decreases in additional compensation may be made to county court judges.

Amended Section 6 (B), Article II, Ohio Constitution, provides as follows:

"(B) The judges of the supreme court, courts of appeals, and of the courts of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished during their term."

Finding sufficient ambiguity as to the intent of the legislature in regard to Amended Section 6, supra, Judge Holden felt justified in resorting to extrinsic evidence in the Price case, supra. After considering the intentions of the Ohio State Bar Association Modern Courts Committee and the Legislative Service Commission's Committee, drafters of the Amendment, of the General Assembly, of contemporary expositions involving the Amendment, and of the voters of Ohio in enacting the Amendment, Judge Holden held that this evidence revealed the broad scope of the 1968 Amendment so as to include municipal judges within its framework. Since the Price case, supra, appears to be the only authority, since Amended Section 6, Article IV of the Ohio Constitution, has been interpreted to extend to municipal court judges, it would be beyond the scope of my authority to conclude that said section does not also apply to county court judges. I must conclude, therefore, that the board of county commissioners may not reduce the amount of additional compensation to county court judges as provided in Section 1907.-082, Revised Code.

The second question to be answered is whether additional compensation granted to one county court judge must be uniformly granted to all other county court judges throughout the county district.

Section 26, Article II of the Ohio Constitution, states:

"All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution."

The question of uniformity in the granting of additional compensation to judges was considered in the case of State, ex rel., Godfrey v. O'Brien, 95 Ohio St. 166 (1917). Paragraph five of the syllabus of this case states:

"5. The provisions of an act of the general assembly purporting to confer authority upon the \* \* \* board of county commissioners, to fix the salary of county or township officers within certain limits, without providing a uniform rule for determining such compensation in the several counties of the state, are in conflict with Section 26 of Article II of the Constitution of Ohio, and void."

Applying the reasoning of the Godfrey case, supra, the court stated in Neff v. Board of County Commissioners of Belmont County, 166 Ohio St. 360, 362 (1957):

"Under the statute in its present form, the Board of County Commissioners in each of the 88 counties could adopt a different formula for fixing salaries, which would not be in conformity with Section 26, Article II of the Constitution. This court is of the opinion that there is a definite lack of direction in Section 1907.47, Revised Code, as to the manner or method of fixing annual salaries for justices of the peace, which renders the section unconstitutional."

Opinion No. 65-18, Opinions of the Attorney General for 1965, provides that: "Uniformity, then, requires only that additional compensation be given equally to all within the class who are entitled."

Syllabus No. 1 in the case of East Fairfield Coal Co. v. Miller, Zoning Inspector, 71 O.L.A. 490 (CP), at page 490, states:

"1. A legislative enactment is general and uniform within the requirements of the Ohio Constitution if it operates equally upon every person and locality within the circumstances covered by the Act, and when a classification contained therein has a reasonable basis, it is not invalid merely because not made with exactness or because in practice it may result in some inequality."

The decision in the case of Sipe v. State, ex rel., Mansfield, 86 Ohio St. 30, 99 N.E. 208, holds that uniformity of compensation of public officials does not mean uniformity in the total amount received, but uniformity in the rate of compensation.

In Opinion No. 8i2, Opinions of the Attorney General for 1957, Syllabus No. 3 reads as follows:

"3. Section 1907.082, Revised Code, authorizing certain additional compensation by allowance by the county commissioners to 'each' county court judge requires such allowance to be uniform within the county court district concerned."

In your request for my opinion you state that you have two county court judges elected to staggering terms; that from the year 1967 to the current year unequal amounts of additional compensation has been granted annually to these two judges. If this manner of determining rates of compensation were to be condoned, it is obvious that the purpose of Section 26, Article II, Ohio Constitution, would be defeated. Since the purpose of Section 26, supra, is to provide a uniform application in the granting of additional compensation to judges, I must conclude that if, in the discretion of the General Assembly or the board of county commissioners, additional compensation is granted to one county court judge, then the same amount of additional compensation must be given to all other county court judges within the county district.

Therefore, it is my opinion and you are hereby advised that:

1. The board of county commissioners may increase but not decrease the annual amount of additional compensation to county court judges as provided in Section 1907.082, Revised Code.

2. Amounts of additional compensation must be paid uniformly to all county court judges within a county district.