

OPINION NO. 70-046

Syllabus:

1. The legislative authority of a municipality may increase the salary of municipal judges, at least until January 1, 1973.

2. Municipal judges are entitled to the additional compensation prescribed for by Section 1901.11, Revised Code, regardless of whether or not such judges are "in term."

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: Paul W. Brown, Attorney General, April 17, 1970

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

"Is the Council of a municipality precluded from prescribing additional compensation to Municipal Judges during their term of office over and above the percapita basis set forth in Section 1901.11 of the Revised Code of Ohio?"

As I read your request, there are really two questions which must be answered. The first of these questions is whether or not the council of a municipality can increase the compensation for municipal judges over and above the per capita basis set forth in Section 1901.11, supra, and the second of these questions which must be answered is whether or not a municipal judge would be entitled to such increase if such increase became effective during the term of such judge's office.

Section 1901.11, supra, provides in pertinent part, as follows:

"Judges designated as part time judges by section 1901.08 of the Revised Code shall receive as compensation not less than six thousand dollars per annum, as the legislative authority prescribes, and such judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office.

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"* * * Notwithstanding any other provision of this section, until the first day of January, 1973, the compensation of all the judges of each municipal court shall not be less than that to which the judges of each court are entitled on the effective date of this act, including any additional compensation prescribed by the legislative authority of such municipality." (Emphasis added)

The first paragraph quoted above indicates quite clearly that part-time municipal judges are to receive a minimum salary of \$6,000 per year plus such additional salary as may be prescribed by the legislative authority of the appropriate municipality. In addition, the last paragraph quoted above indicates that the legislative authority of a municipality has a continuing power to increase compensation of both part-time and full-time municipal judges over and above the minimum salaries provided for such judges, at least until January 1, 1973. Such salaries are, however, subject to the upper limits provided for in Section 1901.11, supra, i.e., not more than an amount which is \$2,000 per annum less than the statutory compensation of a judge of the court of common pleas in the county in which the municipal court is located, or \$23,000, whichever is less.

The last paragraph of Section 1901.11, supra, which is quoted above, and especially that portion which is underlined, provides that the salaries of all municipal judges shall be not less than that amount to which such judges were entitled on the effective date of Section 1901.11, supra (June 10, 1968). The amount to which such judges were entitled on that date would in-

clude not only the minimum amount prescribed by the predecessor section to Section 1901.11, supra, but would also include any additional amount which had been properly prescribed by the legislative authority of a municipality prior to such date. The quoted paragraph as Section 1901.11, supra, goes on to provide however, "including any additional compensation prescribed by the legislative authority of such municipality." To give meaning to that phrase, I can only conclude that the General Assembly intended the legislative authority of municipalities to retain the power to prescribe additional compensation at least until January 1, 1973.

The second, and perhaps more troublesome question involved in your opinion request, is whether or not a municipal judge is entitled to an increase in compensation during term. I have received other opinion requests on this question and, to date, have declined to answer such requests for the reason that the issue is solely constitutional and the determinations of constitutional issues are the singular and exclusive province of the courts. It has come to my attention, however, that municipal judges in some 30 or more counties have been granted the increase in salary provided for by Section 1901.11, supra. This fact, plus the decision of the Court of Common Pleas of Franklin County, Ohio, in the case of Young v. Price, Case No. 236,620, has persuaded me that an answer to your opinion request is both timely and needed in order to provide for uniformity of operation of the statute throughout the State of Ohio.

I am not unmindful of the decision of the Ohio Supreme Court in the case of State, ex rel. Holmes v. Thatcher, 116 Ohio St. 113 (1927), wherein the Ohio Supreme Court held that municipal judges are subject to the prohibition contained in Article II, Section 20 of the Constitution of Ohio. I must agree, however, with the decision of Judge Holden in the Young v. Price case, supra, that as the result of the enactment of Article IV, Section 6, Constitution of Ohio, effective May 7, 1968, "that municipal judges have become cases provided for in the Ohio Constitution and are no longer within the prohibitions of Article II, Section 20 of the Ohio Constitution."

I conclude, therefore, on the authority of Young v. Price, Franklin County Common Pleas Court, Case No. 236,620, dated August 5, 1969, that municipal judges are entitled to the additional compensation prescribed for by Section 1901.11, Revised Code, regardless of whether or not such judges are "in term."

Therefore, it is my opinion, and you are so advised:

1. The legislative authority of a municipality may increase the salary of municipal judges, at least until January 1, 1973.
2. Municipal judges are entitled to the additional compensation prescribed for by Section 1901.11, Revised Code, regardless of whether or not such judges are "in term."