

OPINION NO. 93-006**Syllabus:**

1. The county treasurer, the county sheriff, the clerk of the court of common pleas, the county recorder, the county engineer, and the county prosecuting attorney are entitled to receive salaries for calendar year 1993 in the same amount as the salaries set for each such office in calendar year 1992.
2. Subject to R.C. 325.15(B), the county coroner is entitled to receive a salary for calendar year 1993 in the same amount as the salary set for that office for calendar year 1992.

To: John H. Hanna, Henry County Prosecuting Attorney, Napoleon, Ohio
By: Lee Fisher, Attorney General, February 26, 1993

You have requested an opinion as to whether the county treasurer, county sheriff, clerk of the court of common pleas, county recorder, county coroner, county engineer, and county prosecuting attorney are entitled to receive for calendar year 1993 an increase of five percent over their salaries for calendar year 1992.

Salaries for Certain County Officers

R.C. 325.18, as recently amended in Am. H.B. 684, 119th Gen. A. (1992) (eff. Oct. 8, 1992), states in part:

(A) Notwithstanding sections 325.04 [salary of county treasurer], 325.06 [salary of county sheriff], 325.08 [salary of clerk of court of common pleas], 325.09 [salary of county recorder], and 325.10 [salary of county commissioners] of the Revised Code, the annual compensation for each *county treasurer, county sheriff, clerk of the court of common pleas, county recorder, and county commissioner* shall be as follows:

...

(7) In calendar year 1991, the annual compensation determined under division (A)(6) of this section for calendar year 1990 increased by five per cent.

(8) *In calendar year 1992 and thereafter*, the annual compensation determined under division (A)(7) of this section for calendar year 1991 increased by five per cent, *except as otherwise provided in division (C) of this section.*

....

(C) *In calendar years 1993 and 1994*, the annual compensation for each *county commissioner* shall be as follows:

(1) In calendar year 1993, the annual compensation determined under division (A)(8) of this section for calendar year 1992 increased by five per cent.

(2) In calendar year 1994, the annual compensation determined under division (C)(1) of this section for calendar year 1993 increased by five per cent. (Emphasis added.)

R.C. 325.18, thus, supersedes the salaries otherwise provided by statute for those county officers listed in R.C. 325.18(A).¹ More specifically, R.C. 325.18(A)(1) through (7) prescribe the salaries of the county treasurer, county sheriff, clerk of the court of common pleas, county recorder, and county commissioners for the calendar years 1985 through 1991; for each of those years, the salary was increased by five percent over the salary set for the previous year. Subject to the exception set forth in division (C) of R.C. 325.18, the salaries for all these officers for "calendar year 1992 and thereafter," meaning for calendar year 1992 and each subsequent year, is fixed by R.C. 325.18(A)(8) at the annual compensation for calendar year 1991 increased by five percent.

R.C. 325.18(C), however, is an express exception to the provisions of R.C. 325.18(A). Pursuant to R.C. 325.18(C)(1), each county commissioner is entitled to receive for calendar year 1993 an increase in salary of five percent over the salary for that office for calendar year 1992; R.C. 325.18(C)(2) provides an additional increase in salary for 1994. The exceptions prescribed by R.C. 325.18(C), however, are applicable only to the office of county commissioner and only for calendar years 1993 and 1994.

Because no similar exception to the provisions of R.C. 325.18(A) is made for the offices of county treasurer, county sheriff, clerk of the court of common pleas, and county recorder for calendar year 1993 or any subsequent year, those county officers are entitled to receive for calendar year 1993 the same salary received by each such officer for calendar year 1992.

¹ Separate provision is made in R.C. 325.18(B) for the salary of the county auditor and in R.C. 325.15 for the salary of the county coroner.

Salaries of County Prosecuting Attorney and County Engineer

For purposes of determining the salaries of the county prosecutors and the county engineers, each officer is placed into a numerical classification, from 1 through 14, based on the population of the county he serves, R.C. 325.11(A) and R.C. 325.14(A), respectively. For calendar years after 1984, R.C. 325.11(B)(1) prescribes the salary of the county prosecutor, in part as follows: "(g) In calendar year 1991, the annual compensation determined under division (B)(1)(f) of this section for calendar year 1990 increased by five per cent. (h) *In calendar year 1992 and thereafter*, the annual compensation determined under division (B)(1)(g) of this section for calendar year 1991 increased by five per cent." (Emphasis added.)² Similar provision is made for the salary of the county engineer in R.C. 325.14(B)(1)(g) and (h).³

As with the offices of county treasurer, county sheriff, clerk of the court of common pleas, and county recorder, the General Assembly has not provided for either the county prosecutor or the county engineer to receive a salary increase in calendar year 1993 above the salary each such officer received in calendar year 1992. Rather, in prescribing the salary for the years "*1992 and thereafter*" at the salary level set for calendar year 1991 increased by five percent, the General Assembly has established the salary of the county prosecutor and the county engineer for 1993 and subsequent years at the respective amounts determined for each office for calendar year 1992 pursuant to R.C. 325.11(B) and R.C. 325.14(B), respectively. *See generally* Ohio Const. art. II, §20 (providing in part that the compensation of county officers, among others, unless otherwise provided for in the constitution, is fixed by the General Assembly).

Salary of County Coroner

The final office about which you ask is that of county coroner. R.C. 325.15, also amended in Am. H.B. 684, places the various county coroners, for salary purposes, into one of fourteen classes, according to the population of the county in which the coroner serves. While the amendment of R.C. 325.15(A) in Am. H.B. 684 establishes the amount of compensation for each class at a rate higher than formerly prescribed by that statute, the salary schedule is effective "*for calendar year 1992 and thereafter.*" (Emphasis added.) Although the salary schedule set forth in R.C. 325.15(A) provides no increase in salary for county coroners for calendar year 1993 above the amount received for calendar year 1992, its provisions are subject to R.C. 325.15(B), which reads as follows:

A county coroner in a county included in population classes 10 through 14 as specified in division (A) of this section shall not engage in the private practice of medicine unless, before taking office, he notifies the

² R.C. 325.11(B)(2) prescribes higher salaries for those county prosecutors in classifications 5 through 14 who do not engage in the private practice of law during their service as county prosecutors. R.C. 325.11(B)(2) provides for the salaries of such prosecutors, in part, as follows: "(g) In calendar year 1991, the annual salary determined under division (B)(2)(f) of this section for calendar year 1990 increased by five per cent. (h) *In calendar year 1992 and thereafter*, the annual salary determined under division (B)(2)(g) of this section for calendar year 1991 increased by five per cent." (Emphasis added.)

³ Like county prosecutors, those county engineers who do not engage in the private practice of engineering while holding office receive higher salaries than they would otherwise receive. R.C. 325.14(B)(2).

board of county commissioners of his intention to engage in such practice. *A county coroner in a county included in population classes 10 through 14 as specified in division (A) of this section who does not engage in the private practice of medicine shall be paid in calendar year 1993 and thereafter, instead of the amount prescribed in division (A) of this section, eighty-five thousand one hundred thirty dollars, in equal biweekly installments.*⁴

A county coroner in a county included in population classes 10 through 14 as specified in division (A) of this section shall elect to engage or not to engage in the private practice of medicine before the commencement of each new term of office, and a county coroner in such a county who engages in the private practice of medicine but who intends not to engage in the private practice of medicine during his next term of office shall so notify the board of county commissioners as specified in this division. For a period of six months after taking office, a county coroner who elects not to engage in the private practice of medicine may engage in the private practice of medicine, without any reduction of the salary specified in this division, for the purpose of concluding the affairs of his private practice of medicine. (Emphasis and footnote added.)

Thus, pursuant to R.C. 325.15(B), a county coroner, who serves in a county in population class 10 through 14 and who does not engage in the private practice of medicine during his term of office, is entitled to receive an annual salary of eighty-five thousand one hundred thirty dollars for calendar year 1993 and thereafter, an amount larger than that prescribed by former R.C. 325.15, 1979-1980 Ohio Laws, Part II, 4829 (Am. Sub. H.B. 1122, eff. Dec. 20, 1980), for that position for calendar year 1992. Accordingly, those county coroners described in R.C. 325.15(B) are entitled to receive in calendar year 1993 a salary higher than the salary formerly prescribed for county coroners in those classes.⁵

According to a member of your staff, the population of Henry County does not place the Henry County Coroner in a population class covered by R.C. 325.15(B). The Henry County Coroner is, therefore, to be compensated in accordance with division (A) of R.C. 325.15; the salary payable thereunder to the Henry County Coroner for calendar year 1993 is the same amount as that prescribed for calendar year 1992.

⁴ The salary schedule prescribed by R.C. 325.15(A) for population classes 10 through 14 for calendar year 1992 and thereafter ranges from \$37,675 per year for coroners in class 10 to \$52,449 per year for coroners in class 14. Thus, pursuant to R.C. 325.15(B), for calendar year 1993 and thereafter, those coroners in population classes 10 through 14 who do not engage in the private practice of medicine during their terms of office are entitled to receive a salary higher than those who continue to so practice.

⁵ The position of county coroner is a county office, *see* R.C. 313.01, and is, therefore, subject to Ohio Const. art. II, §20, which prohibits a county officer from receiving an increase in compensation during his term of office. *See generally State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). Concerning the salaries of county coroners for 1993, so long as those county coroners paid in accordance with division (B) of R.C.325.15, are commencing new terms of office beginning in 1993, after Am. H.B. 684, 119th Gen. A. (1992) (eff. Oct. 8, 1992) became effective, art. II, §20 does not prohibit such coroners from receiving the salary increase prescribed by Am. H.B. 684 for calendar year 1993.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. The county treasurer, the county sheriff, the clerk of the court of common pleas, the county recorder, the county engineer, and the county prosecuting attorney are entitled to receive salaries for calendar year 1993 in the same amount as the salaries set for each such office in calendar year 1992.
2. Subject to R.C. 325.15(B), the county coroner is entitled to receive a salary for calendar year 1993 in the same amount as the salary set for that office for calendar year 1992.