

2375

COURTS, COUNTY—JUDGE; COMPENSATION FOR SERVICES IN TRUSTEESHIPS—§§2329.70, 1907.271, .281, .291 R.C.

SYLLABUS:

1. The special provision in Section 2329.70, Revised Code, for compensation of a judge of the county court by the allowance to that officer of two per cent of amounts paid by a debtor to a trustee appointed by such judge is not repealed by any of the general provisions of the statutes, set out in Chapter 1907., Revised Code, relative to the compensation of judges of the county court.

2. The percentage received as compensation by a judge of a county court under the provisions of Section 2329.70, Revised Code, is not included in the items listed in Sections 1907.271, 1907.281 and 1907.291, Revised Code, which are required to be transmitted to the general fund of the county and is not subject to such transmittal by a judge of a county court.

Columbus, Ohio, July 16, 1958

Hon. Wilford R. Miller, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion is as follows:

“Section 2329.70 dealing with Trusteeships provides in part as follows:

“* * * If application for a Trustee is made to a Judge of a County Court, such Judge may receive as full compensation for his services as Judge of a County Court therein, two per cent of the total amount of debtor's payment upon claims as provided in this Section and may appoint any suitable person to act as Trustee. * * *

“Since there is nothing mentioned in the Sections dealing with costs and fees of the Courts concerning such Trusteeships, must two percent be turned over to the County as costs or may it be retained by the County Judges as compensation apart from that fixed by the County Commissioners?”

The statutes authorizing or fixing the regular compensation of a judge of the county court are Sections 1907.081 and 1907.082, Revised Code.

Section 1907.081, Revised Code, is as follows:

“Judges of the county court shall receive as compensation one thousand five hundred dollars per annum plus an additional amount equal to three 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 two thousand five hundred 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.”

Section 1907.082, Revised Code, is as follows:

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

It is noted that said sections relating to compensation do not expressly nor in any way by implication amend or repeal the provisions as to compensation in trusteeship matters under the provisions of Section 2329.70, Revised Code, which reads in part as follows:

“Any person upon whom a demand has been made in accordance with Section 1911.40 of the Revised Code may apply to any judge of a county court or judge of a municipal court within this state, in whose jurisdiction he resides, for the appointment of a trustee to receive that portion of the personal earnings of the debtor not exempt from execution, attachment, or proceedings in aid of execution, and such additional sums as the debtor voluntarily pays or assigns to said trustee. * * *

“* * * If application for a trustee is made to a judge of a county court, such judge may receive as full compensation for his services as judge of a county court therein, two per cent of the total amount of the debtor’s payment on claims as provided in this section, and may appoint any suitable person to act as trustee. Such trustee shall give bond as the judge of the county court shall fix, conditioned upon the fulfillment of the trust, to be paid for by the debtor applicant, and said trustee shall receive as full compensation for his services as such trustee, two per cent of the total amount of the debtor’s payment on claims as provided in this section, all said compensation to be paid before distribution to creditors.”

It is further noted that Sections 1907.271, 1907.281 and 1907.291, Revised Code, list costs and fees for many items of service, which a county court judge shall charge, tax, and collect. The final paragraph of each of these sections provides that the judges of county courts shall not retain any of the costs or fees “specified in this section” but shall transmit such costs and fees to the general fund of the county, with the one exception of fees received for performing the marriage ceremony. The percentage received as compensation by a judge of a county court under the provisions of Section 2329.70, Revised Code, is not included in any of the items mentioned in said sections and is therefore not subject to transmittal to the general fund of the county under the provisions of said sections. Neither do said sections expressly nor by implication amend or repeal the special provisions of Section 2329.70, Revised Code.

In Opinion No. 7441, Opinions of the Attorney General for 1956, pages 832, 833, it is stated:

“It is a well established rule of statutory construction that repeals by implication are not favored, and that they will be recognized only in cases where the two statutes are in such irrecon-

cilable conflict that it is impossible to give effect to both. 37 Ohio Jurisprudence, 397, 398, Section 136. Moreover, there is a presumption against repeal by implication of a special statute by a later general enactment. 37 Ohio Jurisprudence, 408, Section 149.”

The foregoing opinion was written by my immediate predecessor in office and was in response to a question involving the provisions of Section 2329.70, Revised Code, as applicable to justices of the peace after the passage of Senate Bill No. 319, by the 101st General Assembly. It was held in that opinion that the special provision in Section 2329.70, Revised Code, for compensation of a justice of the peace of two per cent of amounts paid by a debtor was not repealed by the general provisions relative to a fixed annual salary of a justice of the peace.

The legislature in enacting the county court system legislation in the 102nd General Assembly amended Section 2329.70, Revised Code, by substituting the words “judge of a county court” and “county court judge” for the words “justice of the peace”. No further change was made in said section. Since the language is clear I can only conclude that the provisions of said section are still effective and a county court judge may receive as compensation for his services as judge of a county court in trusteeships two per cent of the amount of debtor’s payments. The general provisions of the statutes as to the compensation, charges, or fees of a judge of the county court do not expressly nor by implication amend or repeal the special provisions of said section.

Accordingly, it is my opinion and you are advised:

1. The special provision in Section 2329.70, Revised Code, for compensation of a judge of the county court by the allowance to that officer of two per cent of amounts paid by a debtor to a trustee appointed by such judge is not repealed by any of the general provisions of the statutes, set out in Chapter 1907., Revised Code, relative to the compensation of judges of the county court.

2. The percentage received as compensation by a judge of a county court under the provisions of Section 2329.70, Revised Code, is not included in the items listed in Sections 1907.271, 1907.281 and 1907.291, Revised Code, which are required to be transmitted to the general fund of the county and is not subject to such transmittal by a judge of a county court.

Respectfully,
WILLIAM SAXBE
Attorney General