

December 17, 2015

The Honorable John D. Ferrero
Stark County Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, Ohio 44702

SYLLABUS:

2015-037

1. The prosecuting attorney of a county with a population of 70,001 or more whose term of office ends on January 1, 2017, shall receive in his furtherance of justice fund, pursuant to R.C. 325.12(A), an amount equal to half of the annual salary the prosecuting attorney actually receives, notwithstanding that the amount of a prosecuting attorney's annual salary has been increased pursuant to the amendment of R.C. 325.11 in Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015).
2. The prosecuting attorney of a county with a population less than 70,001 whose term of office ends on January 1, 2017, shall receive in his furtherance of justice fund, pursuant to R.C. 325.12(B), an amount equal to half of the annual salary specified by R.C. 325.11, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015), for a prosecuting attorney with a private practice, regardless of the amount of annual salary the prosecuting attorney actually receives.



MIKE DEWINE

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OPINION NO. 2015-037

The Honorable John D. Ferrero
Stark County Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, Ohio 44702

Dear Prosecutor Ferrero:

You have requested an opinion concerning the appropriate amount to be allocated to a prosecuting attorney's furtherance of justice fund for calendar year 2016. The furtherance of justice fund allocation is tied to the amount of a prosecuting attorney's statutory salary, and your question is prompted by recent legislation increasing the amount of a prosecuting attorney's annual salary in R.C. 325.11 and R.C. 325.18.¹ Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015).

Article II, § 20 of the Ohio Constitution declares that "[t]he 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." This provision prohibits any change, whether an increase or decrease, in a public officer's compensation during his existing term of office. 2013 Op. Att'y Gen. No. 2013-016, at 2-143 to 2-144; 2003 Op. Att'y Gen. No. 2003-027, at 2-226. Because of this prohibition, current prosecuting attorneys who are mid-term will not receive in 2016 the salary increase enacted in Am. Sub. H.B. 64. We understand mid-term prosecuting attorneys to be those persons who are serving a term of office that ends on January 1, 2017. These prosecuting attorneys were elected in November 2012 and began their current term of office on the first Monday of January 2013. *See* R.C. 309.01. You wish to know whether the allowance described in R.C. 325.12 to be allocated to a prosecuting attorney's furtherance of justice fund will increase in 2016 in accordance with the new compensation schedule for a prosecuting attorney.

¹ In our view, the furtherance of justice fund created by R.C. 325.12 is not a component of a prosecuting attorney's total compensation.

The allowance to a prosecuting attorney known as the furtherance of justice fund is authorized by R.C. 325.12:

(A) *Except for the prosecuting attorney of a county with a population of less than seventy thousand one*, there shall be allowed annually to the prosecuting attorney, in addition to the prosecuting attorney's salary provided by [R.C. 325.11 and R.C. 325.18] and to the allowance provided for by [R.C. 309.06], *an amount equal to one-half of the official salary the prosecuting attorney receives*, to provide for expenses the prosecuting attorney may incur in the performance of the prosecuting attorney's official duties and in the furtherance of justice.

(B) There shall be allowed annually *to the prosecuting attorney of a county with a population of less than seventy thousand one*, in addition to the prosecuting attorney's salary provided by [R.C. 325.11 and R.C. 325.18] and to the allowance provided for by [R.C. 309.06], *an amount equal to one-half of the salary specified for a prosecuting attorney with a private practice* under [R.C. 325.11 and R.C. 325.18], to provide for expenses the prosecuting attorney may incur in the performance of the prosecuting attorney's official duties and in the furtherance of justice. (Emphasis added.)

The amount of the furtherance of justice allowance is dependent on the population of the county of the prosecuting attorney. In counties with a population of 70,001 or more, the prosecuting attorney's furtherance of justice fund amount is equal to half of "the official salary the prosecuting attorney receives." R.C. 325.12(A). In counties with a population less than 70,001, the prosecuting attorney's furtherance of justice fund amount is equal to half of "the salary specified for a prosecuting attorney with a private practice" under R.C. 325.11 and R.C. 325.18. R.C. 325.12(B).

The plain language of R.C. 325.12(A) declares that the prosecuting attorney of a county with a population of 70,001 or more shall receive in his furtherance of justice fund an amount equal to half of the salary the prosecuting attorney actually receives. This means that, when the General Assembly amends the prosecuting attorney compensation statute to effect a salary increase, if a particular prosecuting attorney is mid-term and thus prohibited from receiving the increased salary, the amount allocated to the prosecuting attorney's furtherance of justice fund shall not be calculated on the basis of the increased amount of salary set forth in R.C. 325.11 and R.C. 325.18. *See generally* Ohio Const. art. II, § 20 (prohibition on in-term changes in the salary of a public officer). This is because, pursuant to R.C. 325.12(A), the prosecuting attorney of a county with a population of 70,001 or more shall receive in his furtherance of justice fund an amount equal to half of the salary he *receives*, not half of the salary prescribed by statute.

The prosecuting attorney of a county with a population less than 70,001 shall receive in his furtherance of justice fund, pursuant to R.C. 325.12(B), an amount equal to half of the salary specified by statute (R.C. 325.11, R.C. 325.18) for a prosecuting attorney with a private practice. This means that, when the General Assembly amends the prosecuting attorney compensation

statute to effect a salary increase, the furtherance of justice fund amount reflects that increase for a prosecuting attorney of a county with a population less than 70,001. This is because, pursuant to R.C. 325.12(B), the prosecuting attorney of a county with a population less than 70,001 shall receive in his furtherance of justice fund an amount equal to half of the salary *specified under the statute*, not half of the salary he actually receives.

The language of R.C. 325.12 is unequivocal and free of ambiguity. In the absence of uncertainty in the statute, we need not interpret the statute to arrive at the intention of the General Assembly. Rather, our conclusions are based upon the plain meaning of the words the General Assembly has enacted. *See Slingsluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph 2) (“the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction”); *accord State v. Hairston*, 101 Ohio St. 3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶12 (2004); 2008 Op. Att’y Gen. No. 2008-002, at 2-8 to 2-9.

Conclusion

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

1. The prosecuting attorney of a county with a population of 70,001 or more whose term of office ends on January 1, 2017, shall receive in his furtherance of justice fund, pursuant to R.C. 325.12(A), an amount equal to half of the annual salary the prosecuting attorney actually receives, notwithstanding that the amount of a prosecuting attorney’s annual salary has been increased pursuant to the amendment of R.C. 325.11 in Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015).
2. The prosecuting attorney of a county with a population less than 70,001 whose term of office ends on January 1, 2017, shall receive in his furtherance of justice fund, pursuant to R.C. 325.12(B), an amount equal to half of the annual salary specified by R.C. 325.11, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015), for a prosecuting attorney with a private practice, regardless of the amount of annual salary the prosecuting attorney actually receives.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General