

OPINION NO. 1011**Syllabus:**

The pension of a police chief who is also serving as a bailiff of a municipal court pursuant to Section 1901.32, Revised Code, is to be based on the combined salary he receives as bailiff and chief of police.

To: James O. Gossett, Ashland County Pros. Atty., Ashland, Ohio
By: William B. Saxbe, Attorney General, April 30, 1964

I have before me your request for my opinion which reads as follows:

"The following questions have arisen through the Law Director about the Police Relief and Pension Fund of the City of Ashland, Ohio.

"The Chief of Police of the Ashland City Police Department is now retiring and for some years has served as Bailiff of the Ashland Municipal Court as well as Chief of Police.

"Pursuant to Opinion 1954 OAG #4451, four percent of the three-fifths of his salary as Bailiff, which is paid by the City of Ashland, has been deducted and paid into the Police Relief and Pension Fund in addition to the deductions from his salary as Chief of Police.

"The question is, should his pension be based on the combined salaries he received as Bailiff and Chief of Police, or simply on the Chief of Police salary?

"In the event the Bailiff's salary is not used, should the four percent from said salary be refunded to him or remain in the pension fund?"

Chapter 741, Revised Code, deals with pension funds. Based on the facts you set forth in your letter the following parts of Section 741.49, Revised Code, are pertinent here and read as follows:

"The board of trustees of the police relief and pension fund shall adopt rules and regulations for the management of such fund and for the disbursement of benefits and pensions as set forth in this section.

"Members of the fund who, on or after September 25, 1947, are granted pensions or disability benefits by the board are entitled to receive pensions and benefits as provided by divisions (A) to (E), inclusive, of this section * * *

"(A) A member of the fund who has completed twenty-five years of active service in the police department and has attained fifty-two years of age may, at his election, retire from the police department, and upon notifying the board in writing of such election, shall receive an annual pension, payable in twelve monthly installments, in an amount equal to two per cent of his average annual salary for the five calendar years during which his total annual salary as member of said police department was the greatest multiplied by the number of years he was in the active service of such department, or an annual pension of fifteen hundred dollars, whichever amount is the greater. Such annual pension shall not exceed sixty-six per cent of the member's average annual salary for the five calendar years during which his total annual salary as a member of said police department was the greatest." (Emphasis added)

Thus, the pension of a member of the police department who qualifies for benefits under Section 741.49, Revised Code, depends on his salary received as a member of the police department. The issue then becomes whether the compensation received by the chief of police here in his capacity as bailiff is to be considered as part of his annual salary as a member of the police department within the meaning of Section 741.49, Revised Code.

After examining both the rationale and the conclusion of my predecessor in Opinion No. 4451, Opinions of the Attorney General for 1954, which rationale and conclusion I fully agree with, I am compelled to conclude that this opinion is conclusive of the issue here. My predecessor concluded in this opinion that the salary paid to the chief of police for serving as bailiff of a municipal court pursuant to Section 1901.32, Revised Code, is part of his salary as a member of the police department for the purpose mentioned in Section 741.43, Revised Code, i.e., for deduction and payment to the Police Relief and Pension Fund.

My predecessor reasoned that because Section 1901.32 (D),

Revised Code, provides that every police officer of a municipal corporation is ex officio a deputy bailiff, it follows that the duties of a deputy bailiff are implicit within the office of a police officer and the duties of a bailiff if performed by the chief of police are also in their nature police duties. The compensation received by the chief of police as bailiff is thus subject to Section 741.43, Revised Code, as the statute contemplates deductions from the salary of a member of the police department if the salary is for police duties.

My predecessor found further support for his conclusion from the fact that Section 145.02, Revised Code, expressly excludes members of the police relief and pension fund from membership in the public employees retirement system. Thus my predecessor states in his opinion on page 552, that:

"Accordingly, unless the service and salary of a policeman as bailiff in the municipal court is to be considered as related to the police pension system he can have no benefit based on his service as bailiff, by way of retirement allowance from any fund; which, in my opinion would be out of accord with the evident purpose of the law to provide retirement and other benefits for all classes of public employees."

Section 741.49, Revised Code, bases the pension of a member of the police department on his total annual salary as a member of the police department. The rationale as hereinabove set out that compelled my predecessor to conclude that "salary" as used in Section 741.43, Revised Code, includes compensation received by the chief of police as bailiff of the court here compels me to conclude that "salary" as used in Section 741.49, Revised Code, also includes compensation received by the chief of police as bailiff of the court. Also, as both these statutes are in pari materia, it would be unreasonable to believe that the legislature would ascribe one meaning to "salary" for purposes of deductions to be paid into the police relief and pension fund pursuant to Section 741.43, Revised Code, and a different meaning to "salary" for purposes of computing the amount of a forthcoming pension due under Section 741.49, Revised Code. Thus, I must conclude that "salary" as used in Sections 741.43 and 741.49, Revised Code, has the same meaning.

Therefore, it is my opinion and you are hereby advised that the pension of a police chief where he is also serving as a bailiff of a municipal court pursuant to Section 1901.32, Revised Code, is to be based on the combined salary he receives as bailiff and chief of police.