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COMPENSATION—MUNICIPAL COURT JUDGE—TO DETERMINE AMOUNT PAYABLE FROM CITY TREASURY AND FROM COUNTY TREASURY—SECTION 1901.11 RC—TERM INCLUDES COMPENSATION AS TO TERRITORIES, POPULATION MORE THAN TWENTY THOUSAND, FOUR THOUSAND DOLLARS—AN AMOUNT EQUAL TO A STIPULATED NUMBER OF CENTS PER CAPITA OF POPULATION—ANY ADDITIONAL COMPENSATION PRESCRIBED BY LEGISLATIVE AUTHORITY OF CITY WHERE COURT LOCATED.

SYLLABUS:

In computing the "compensation" of a municipal court judge for the purpose of determining the respective amount of such compensation payable from the city treasury and from the county treasury under the provisions of Section 1901.11, Revised Code, the term "compensation" includes, as to territories having a population of more than twenty thousand, the sum of (1) four thousand dollars, (2) an amount equal to a stipulated number of cents per capita of the population, and (3) any additional compensation which may be prescribed by the legislative authority of the city in which the court is located.

Columbus, Ohio, April 2, 1954

Hon. Myron A. Rosentreter, Prosecuting Attorney
Ottawa County, Port Clinton, Ohio

Dear Sir:

In your letter of recent date you request my opinion as to what part of the salary of the judge of the Port Clinton Municipal Court is payable by Ottawa County and what part is payable by the City of Port Clinton.

By the enactment of Amended Substitute House Bill No. 96 of the 100th General Assembly, a municipal court was established in Port Clinton with jurisdiction in Ottawa County, except in Put-in-Bay Township. A judge was elected in November, 1953 and assumed office January 1, 1954.

Based on the authority given in Section 1901.11, Revised Code, the legislative authority (city council) of the City of Port Clinton prior to the beginning of the term of office of the judge, prescribed additional compensation over and above that compensation specifically fixed by the statute. This made the total salary of the judge \$6,000 per year. Without such additional compensation, the judge's total salary would have been \$4,866.13 per year. Your question is whether under the terms of Section 1901.11 the county is required to pay two-fifths of the \$6,000, or only two-fifths of the \$4,866.13.

Section 1901.11, Revised Code, insofar as pertinent, reads as follows:

"In territories having a population of not more than twenty thousand, judges shall receive as compensation not less than two thousand dollars per annum, as the legislative authority prescribes, * * *. In territories having a population of more than twenty thousand, judges * * * shall receive as compensation four thousand dollars per annum, plus an amount equal to three cents per capita for the first fifty thousand of the population of the territory; two cents per capita for the population of said territory of more than fifty thousand and not more than one hundred thousand; one cent per capita for the population of such territory of more than one hundred thousand and not more than three hundred thousand; and one-half cent per capita for the population of such territory of more than three hundred thousand, but the legislative authority may prescribe additional compensation of not more than three thousand dollars. The compensation of any municipal judge shall not be more than the statutory compensation of a judge of the court of common pleas in the county in which the municipal court is situated, nor shall compensation of a municipal judge be more than twelve thousand dollars. * * *.

"The compensation of municipal judges shall be paid in semi-monthly installments, three-fifths of such amount being payable from the city treasury and two-fifths of such amount being payable from the treasury of the county in which such city is situated. * * *."

It will be noted that in a territory with over twenty thousand population, the "compensation" of a municipal court judge consists of the

total of (1) four thousand dollars, (2) an amount equal to a certain number of cents per capita of the population, and (3) additional compensation of not more than three thousand dollars as the legislative authority may prescribe. There is nothing in the statute which provides that the additional compensation prescribed by the legislative authority shall be paid solely from the municipal treasury. Instead, the statute provides that "The *compensation* * * * shall be paid * * * three-fifths * * * from the city treasury and two-fifths * * * from the treasury of the county in which said city is situated."

If there be any doubt that the term "compensation" as employed in Section 1901.11 includes all three of the factors previously enumerated, such doubt should be resolved when it is remembered that the statute also provides that "The compensation of any municipal judge shall not be more than the statutory compensation of a judge of the court of common pleas in the county in which the municipal court is situated nor shall compensation of a municipal judge be more than twelve thousand dollars." Would anyone seriously contend that the "additional compensation" prescribed by the legislative authority would not be included in determining the maximum limit of twelve thousand dollars, or in determining whether the compensation of the municipal judge exceeded the statutory compensation of a judge of the court of common pleas? I believe not.

It is also important to note that in territories of not more than twenty thousand population, the entire compensation of the judge is prescribed by the legislative authority subject to the requirement that such compensation be not less than two thousand dollars. Could it thus be said that because the amount of the compensation in such cases is not fixed by statute, but instead prescribed by the legislative authority of the municipality, that such is not "compensation" within the meaning of that term as employed in the sentence requiring the county to pay two-fifths of the "compensation" of the judge? Again, I believe the answer is clearly no.

It should be noted that paragraph (C) of Section 1901.31, Revised Code, provides that in territories having a population of less than one hundred thousand, the clerk of the municipal court shall receive such annual compensation as the legislative authority prescribes. This same paragraph provides that "Such compensation is payable in semi-monthly

installments from the *same sources and in the same manner* as provided in Section 1901.11 of the Revised Code." In such cases, therefore, the entire compensation, and without any minimum salary being fixed by statute, is prescribed by the legislative authority of the municipality. Again, it is clear that two-fifths of such compensation is payable from the treasury of the county and three-fifths payable from the treasury of the city.

Where the General Assembly intended for payment to be made from the city treasury, it specifically provided. For example, under the provisions of paragraph (H) of Section 1901.31, the compensation of deputy clerks is payable out of the city treasury and under the provisions of paragraph (B) of Section 1901.32, the compensation of deputy bailiffs is payable out of the city treasury. As to such deputy clerks and deputy bailiffs, therefore, there is no provision for any payment by the county and the total compensation is paid by the city.

Whether or not the legislative scheme of requiring a county to pay moneys where the amount of such payment is determined in part at least by the legislative authority of a city over which no county officer has any control is wise or unwise is a matter of policy which must be and has been determined by the legislative branch of our government. I believe it clear, however, that the plain language of Section 1901.11, Revised Code, does require such payment.

In specific answer to your question, it is my opinion that in computing the "compensation" of a municipal court judge for the purpose of determining the respective amount of such compensation payable from the city treasury and from the county treasury under the provisions of Section 1901.11, Revised Code, the term "compensation" includes, as to territories having a population of more than twenty thousand, the sum of (1) four thousand dollars, (2) an amount equal to a stipulated number of cents per capita of the population, and (3) any additional compensation which may be prescribed by the legislative authority of the city in which the court is located.

Respectfully,

C. WILLIAM O'NEILL

Attorney General