

**OPINION NO. 80-014****Syllabus:**

1. The creation and maintenance of the municipal courts is reserved to the General Assembly pursuant to Ohio Const. art. IV, §1. The home rule doctrine found in Ohio Const. art. XVIII, §3 does not give a municipality the authority to legislate concerning municipal courts.
2. R.C. 1901.31(H) gives the clerk of a municipal court the sole

power to fix the salaries of the deputy clerks of the court. Regardless of R.C. 1901.36 and any charter provisions or ordinances, neither the legislative authority of a municipal corporation nor the city manager, if any, has the authority to fix the salaries of the deputy clerks of a municipal court.

**To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio**  
**By: William J. Brown, Attorney General, May 2, 1980**

I have before me your request for my opinion regarding the compensation of the deputy clerks of a municipal court. You stated your question as follows:

Your opinion is hereby requested as to whether the compensation of a deputy clerk is to be prescribed by the clerk as set forth in §1901.31(H) or whether it is a matter of city management within the purview of the city manager.

The essence of your question is whether a municipality may govern its municipal courts by virtue of Ohio Const. art. XVIII, §3, or whether the state has retained the power to legislate regarding such courts by virtue of Ohio Const. art. IV, §1. Art. XVIII, §3 provides: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." This section, adopted September 3, 1912, is commonly known as the Home Rule Amendment of the constitution. The Ohio Supreme Court described the nature of home rule power in *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E. 2d 864 (1968). Paragraph one of the syllabus reads as follows:

By reason of Sections 3 and 7 of Article XVIII of the Ohio Constitution, a charter city has all powers of local self-government except to the extent that those powers are taken from it or limited by other provisions of the Constitution or by statutory limitations on the powers of the municipality which the Constitution has authorized the General Assembly to impose.

13 Ohio St. 2d at 63, 233 N.E. 2d at 866.

The court system is one of the areas where the power of self-government has been taken from all municipal corporations by a provision in the Constitution. Art. IV, §1 reads: "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Clearly, a municipal corporation may not create a court, as that power has been excepted from the home rule powers. *State ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St. 468, 147 N.E. 647 (1925). In *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 222 N.E. 2d 798 (1966), the Stark County Court of Appeals held that art. IV, §1 also prevents municipalities from legislating regarding courts, even though the courts are located within the territorial limits of the municipality. The court stated: "Under the Ohio Constitution, Section 1, Article IV, the state Legislature has the power to create Municipal Courts and to provide for their maintenance and employees." *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d at 32, 222 N.E. 2d at 800 (emphasis added). Since the Ohio Constitution allows only the General Assembly to govern the municipal court system, the City of Cleveland Heights may not, by charter or ordinance, achieve a contrary result. Regardless of the provisions of the City Charter and of any local ordinances, the City Manager of Cleveland Heights may not, therefore, rely on the home rule doctrine to support his assertion that he should set the rate of compensation for the deputy clerks of municipal court.

The conclusion that state rather than local law must control in the area of municipal courts does not end the analysis. At first glance, there is an apparent conflict between R.C. 1901.36 and R.C. 1901.31(H). R.C. 1901.36 provides in

pertinent part: "The legislative authority [of the municipal corporation] shall provide such other employees [for the municipal court] as are necessary, each of whom shall be paid such compensation out of the city treasury as the legislative authority prescribes. . . ." R.C. 1901.31(H) reads in part: "Deputy clerks may be appointed by the clerk and shall receive such compensation payable in semimonthly installments out of the city treasury as the clerk may prescribe. . . ." It would appear from these statutes that the legislative authority of a municipality has the power to fix the rate of compensation of municipal court employees under R.C. 1901.26, while the clerk of municipal court has an identical power under R.C. 1901.31(H) with respect to deputy clerks of the court.

This apparent conflict has been addressed previously by the Ohio courts. In Sparma, the court held that the clerk of municipal court and not the city council had the power to set the salaries of the deputy clerks. The court reasoned that, pursuant to the power to legislate, discussed above, the General Assembly had properly provided for the maintenance of the municipal courts, and thus the municipality had no power to prescribe otherwise. The court stated:

The Legislature having seen fit to provide by Section 1901.31(H), Revised Code, that these deputy clerks in question shall be appointed by the clerk and shall receive such compensation as the clerk may prescribe, such action on the part of the Legislature is within its constitutional power.

. . . .

It is apparent that the city council has looked upon and treated the clerk's office as just another department of the city government, whereas it has been exempted by the state Legislature from such classification and has been put in a special exempted class or department of the Municipal Court.

Sparma, 9 Ohio App. 2d at 32-33, 222 N.E. 2d at 800. The court concluded that, since R.C. 1901.31(H) was passed pursuant to the authority to govern municipal courts, "discretion as to amount-of-appropriation measures for deputy clerks of Municipal Court has been taken from city council by the state Legislature and by law vested in the clerk." 9 Ohio App. 2d at 33, 222 N.E. 2d at 800.

Although your question involves action taken by a city manager rather than a city council, this does not change my conclusion. The power to fix the rate of compensation has been vested in the clerk of municipal court by statute. As discussed above, such statutory power may not be modified by the provision of a municipal charter or ordinance. Furthermore, this power is not affected by the identity of the city official challenging the clerk.

In support of my conclusion, a careful reading of the statutes involved shows that R.C. 1901.36 must be interpreted in light of R.C. 1901.31(H). The municipal legislative authority, under R.C. 1901.36, may hire "such other employees as are necessary." (Emphasis added.) The deputy clerks of municipal court are specifically provided for by R.C. 1901.31(H) and do not, therefore, constitute other necessary employees for the purposes of R.C. 1901.36.

In conclusion, it is my opinion, and you are advised, that:

1. The creation and maintenance of the municipal courts is reserved to the General Assembly pursuant to Ohio Const. art. IV, §1. The home rule doctrine found in Ohio Const. art. XVIII, §3 does not give a municipality the authority to legislate concerning municipal courts.
2. R.C. 1901.31(H) gives the clerk of a municipal court the sole power to fix the salaries of the deputy clerks of the court. Regardless of R.C. 1901.36 and any charter provisions or

ordinances, neither the legislative authority nor the city manager, if any, has the authority to fix the salaries of the deputy clerks of a municipal court.