

Note from the Attorney General's Office:

1941 Op. Att'y Gen. No. 41-3955 was overruled by
1990 Op. Att'y Gen. No. 90-023.

3955

SALARY — ELECTIVE COUNTY OFFICERS — RECEIVE FOUR FULL ANNUAL SALARIES — COMMENCE FIRST DAY OF TERM — END SAME DAY FOUR YEARS THEREAFTER — PERIOD, GREATER OR LESS THAN FOUR FULL CALENDAR YEARS.

SYLLABUS:

Elective county officers whose terms commence on a certain day in the month, such as the first Monday in January, and continue for a period of four years, are not entitled to salary for that part of the year prior to the commencement of their term, but are to receive four full annual salaries for a period commencing on the first day of their term, and ending on the same day four years thereafter, even though such period may be greater or less than four full calendar years.

Columbus, Ohio, July 2, 1941.

Hon. Frederick L. Orum, Prosecuting Attorney,
Cadiz, Ohio.

Dear Sir:

This will acknowledge receipt of your letter containing the following request for my opinion:

“The State Examiner is now here in Cadiz and while working on the Clerk of Court’s records discovered that this county had at the beginning of her term, which was the 6th of January, 1941, paid her only proportionately for the month of January, that is docketed her for the first six days, and gave it to the outgoing Clerk, Mr. Love. This practice has been followed generally in all the offices even in my own. When this was done in my case I felt personally it was legally wrong, but due to my personal connection with the question I said nothing.

In connection with the Clerk’s question the Examiner has cited G. C. 2876 which provides the term of Office for the Clerk and also G. C. 2989 which provides that such Clerk shall receive an annual salary monthly. I agree with the Examiner that under the law the Clerk’s salary as well as the other officers, is their annual salary divided into 12 payments.”

In answer thereto, Section 2867, General Code of Ohio, provides that the clerk of the court of common pleas shall assume office on the first Monday of January next after his election, and shall hold said office for a period of four years. From this, it follows that until the first Monday of January following his election, the successful candidate is not the clerk of courts of the county and is not entitled to the rights and privileges of his office, nor to perform the duties of such office. It is well established that a public officer has no right to receive his salary until his term commences or until he commences to render the services called for by his office. This is well set out in the case of *United States v. Flanders*, 112 U.S., 88, 91; 28 L. Ed. 630, 631, where the Court said:

“But, we are of opinion that the statute is satisfied by holding that his title to receive or retain or hold or appropriate the commissions as compensation, does not arise until he takes and subscribes the oath of affirmation, but that, when he does so, his compensation is to be computed on moneys collected by him, from the time when, under his appointment, he began to perform services as collector, which the Government accepted, provided he has paid over and accounted for such moneys.”

A similar rule was early adopted by the Supreme Court of this state in the case of *Ex Parte, Lawrence*, 1 O.S., 431, when the Court said:

“Where the duties of a public officer, entitled to an annual salary, continue through the entire year, the salary accrues and becomes payable for the space of time only during which the duties are required to be performed.”

From this it seems apparent that the clerk and other county officers are not entitled to receive any salary for that part of the year prior to the time when their term commences. Section 2867, General Code, provides that the term shall commence on the first Monday in January following the election.

Section 2989, General Code, provides that each county officer shall receive an annual salary payable in monthly installments. The word “annual” is defined in Webster’s New International Dictionary as:

“Performed or accomplished in a year; reckoned by the year; as the annual motion of the earth.”

However, it is well established that there are many types of annual periods other than the calendar year. It is possible to have a fiscal year commencing on almost any day of the year and yet to keep books and records on an annual basis, that is, a basis of twelve months, fifty-two weeks or three hundred and sixty-five days. From this it follows that the county officers are entitled to receive an annual salary payable in monthly installments for a period of four years from and after the day on which they first take office. Such a rule is indicated in *Ex Parte Lawrence*, supra, where the Court said:

“But where the duties of an officer, entitled to an annual salary are of such a nature that all his duties for the year may be performed and completed within less time than the year, the compensation for the entire year would be payable, in case the duties required by law for the year are performed, although the office might be abolished before the end of the year; and, in such case, where there is only a partial performance before the abolishment of the office, the compensation should be apportioned to the duties performed, and not to the lapse of time.”

From the foregoing, it is apparent that if, due to the changes of the date on which the first Monday in January occurs, the clerk and other county officers do not serve four full periods of twelve months, fifty-two weeks, or three hundred and sixty-five days, they still would be entitled to the full salary for four years.

In specific answer to your inquiry, it is my opinion that elective county officers do not serve full periods of twelve months, fifty-two such as the first Monday in January, and continue for a period of four years, are not entitled to salary for that part of the year prior to the commencement of their term, but are to receive four full annual salaries for a period commencing on the first day of their term, and ending on the same day four years thereafter, even though such period may be greater or less than four full calendar years.

Respectfully,

THOMAS J. HERBERT,

Attorney General.