

OPINION NO. 77-055

Syllabus:

- (1) The maximum compensation payable to a township trustee pursuant to R.C. 505.24, is determined by the annual budget of the township and is in no way altered by the method of compensation.
- (2) If a trustee is paid on an annual basis in accordance with R.C. 505.24, monthly payments are to be uniform with any necessary adjustment for the year to be made in the December payment.
- (3) If a township trustee serves for only a fraction of the calendar year, pursuant to R.C. 505.24, any adjustment necessary as to his salary may be made in his final payment.

- (4) All township trustees, regardless of how they are paid, are required by R.C. 505.24 to keep an itemized statement of their per diem accounts.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, October 3, 1977

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

In light of Section 505.24, Revised Code, I respectfully ask your formal opinion as to the following questions:

1. Is the compensation received by a township trustee altered in amount by the method of compensation selected by the board of township trustees. That is to say, is an adjustment necessary in the December payment so that the compensation ultimately received by a township trustee paid on an annual salary basis does not exceed the amount to which the same township trustee would be entitled if paid on a per diem basis for verified days of business in the service of the township?
2. If such an adjustment is necessary, how is it to be made with respect to an individual who serves as township trustee for a fraction of a calendar year?
3. Where an annual salary has been adopted as the method of compensation for township trustees, is it necessary for a township trustee to continue to maintain an itemized statement of his per diem account?

It is well settled in Ohio that boards of township trustees are creatures of statute and possess only such powers as are expressly or impliedly conferred upon them by statute. See e.g. State, ex rel. Locher v. Manning, 95 Ohio St. 97 (1916); Hopple v. Brown Township, 13 Ohio St. 311 (1862); 1973 Op. Att'y Gen. No. 73-090. It is necessary, therefore, to consider the language of the statute governing the compensation of township trustees in order to resolve the questions you present.

R.C. 505.24, which was most recently amended by Am. S.B. No. 237 (eff. 1-11-77), is set forth in full below:

Each township trustee is entitled to compensation as follows:

- (A) Twelve dollars for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties;

(B) An amount for each day of service in the business of the township, to be paid from the township treasury as follows:

(1) In townships having a budget of less than ten thousand dollars, twelve dollars per day for not more than one hundred days;

(2) In townships having a budget of from ten thousand to twenty thousand dollars, twelve dollars per day for not more than one hundred thirty days;

(3) In townships having a budget of from twenty thousand to thirty thousand dollars, twelve dollars per day for not more than one hundred sixty days;

(4) In townships having a budget of from thirty thousand to two hundred thousand dollars, twelve dollars per day for not more than two hundred days;

(5) In townships having a budget of from two hundred thousand to three hundred fifty thousand dollars, seventeen dollars per day for not more than two hundred days;

(6) In townships having a budget of three hundred fifty thousand dollars or over, twenty-two dollars per day for not more than two hundred days.

Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the township clerk and preserved for inspection by any persons interested.

By unanimous vote a board of township trustees may adopt a method of compensation consisting of an annual salary to be paid in equal monthly payments with any necessary adjustments for the year to be made in the December payment. If the office of trustee is held by more than one person during any calendar year, each person holding the office shall receive payments for only those months, and any fractions thereof, during which he holds the office. The annual salary shall not exceed the maximum amount that could be received annually by a trustee if he were paid on a per diem basis as specified in this division. A board of township trustees which has adopted a salary method of compensation may return to a method of compensation on a per diem basis as specified in this division

by a majority vote. Any change in the method of compensation shall be effective on the first day of January of the year following the year during which the board has voted to change the method of compensation.

Thus, the General Assembly has manifested its intent to limit the amount of compensation payable to a township trustee. The statute clearly mandates that the township's budget shall be the only measure of the maximum compensation allowed by law. My predecessor recognized this in 1951 Op. Att'y Gen. No. 680, p. 401, wherein he interpreted a statute similar to R.C. 505.24.

Even more specifically, R.C. 505.24 unambiguously states that if a board of township trustees adopts the annual method of compensation, which it may do by unanimous vote, such annual salary ". . . shall not exceed the maximum amount that could be received annually by a trustee if he were paid on a per diem basis. . . ."

There is, then, no reason to conclude that the amount of compensation payable to a township trustee is in any way altered by the method of compensation, whether annual or per diem. Thus, in a township having a budget of less than ten thousand dollars, for example, the maximum amount that could be paid annually to a trustee is \$1,200.00. It is the size of the budget that determines the amount of compensation to be paid to a township trustee; the method by which he may be compensated is irrelevant in making this determination.

R.C. 505.24 further states that a trustee paid on an annual basis shall receive equal monthly payments, with any adjustments for the year to be made in the December payment. Thus, in a township having a budget of less than ten thousand dollars, the board of township trustees may estimate that a trustee's services will be required for one hundred days in the coming year, thereby entitling that trustee to a salary of \$1,200.00 or \$100.00 per month. If in fact such trustee is required to serve the township only ninety-five days, his December payment will be reduced by \$60.00, thereby resulting in a net payment of \$40.00 for that month. Conversely, if the board of trustees of a township having a budget of less than \$10,000 determines it will need the services of each of its trustees for fifty days, and they are subsequently required to work fifty-two days, each trustee will be entitled to an additional \$24.00 (\$12.00 per day for two days) in the December payment. A township trustee is, then, paid only for those days actually spent in the service of township business. To the extent that his annual salary, paid in equal installments, either exceeds or falls short of the amount of compensation due him on a per diem calculation, an adjustment will be necessary to correct the discrepancy. In no event, of course, may the trustee be compensated for more days than authorized by R.C. 505.24.

In specific answer to your first question, it is my opinion and you are so advised that the compensation received by a township trustee is not altered in amount by the method of compensation chosen by the board of township trustees. Hence, an adjustment is necessary in the December payment either if the amount of compensation paid to a trustee fails to equal or exceeds the amount due him on a per diem calculation.

Your second question relates to the necessity of making a salary adjustment in the situation in which a trustee serves for only a fraction of the calendar year and, providing such an adjustment is necessary, when it should be made. R.C. 505.24 provides that when more than one person holds the office of township trustee in a given calendar year, each person shall be compensated for only those months during which he held office. This sentence of the statute must be read in conjunction with the language stating ". . . any necessary adjustments for the year to be made in the December payment."

The statute does not directly address the situation you describe. However, since a trustee is compensated only for those months during which he held office, if he resigns during the year he would receive no December payment. It would logically follow that any necessary adjustment in his salary would be reflected in his final paycheck.

Finally, you ask whether a township trustee who is being paid on an annual basis need maintain an itemized statement of his per diem account. R.C. 505.24 states that "each trustee shall present an itemized statement of his account for such per diem and services. . . ." The statute makes no exception for those trustees paid on an annual basis. It is clear that the General Assembly sought to hold all township trustees accountable for those days spent performing duties related to township business. Moreover, regardless of the method of payment chosen, the amount of payment due is determined by the budget size and the per diem accounts. Thus, it is necessary that a trustee maintain such an account in order to assure his just compensation pursuant to R.C. 505.24. Therefore, it is my opinion and you are so advised that an itemized statement of per diem activities must be kept by all township trustees, regardless of the method by which they are paid.

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

- (1) The maximum compensation payable to a township trustee pursuant to R.C. 505.24, is determined by the annual budget of the township and is in no way altered by the method of compensation.
- (2) If a trustee is paid on an annual basis in accordance with R.C. 505.24, monthly payments are to be uniform with any necessary adjustment for the year to be made in the December payment.
- (3) If a township trustee serves for only a fraction of the calendar year, pursuant to R.C. 505.24, any adjustment necessary as to his salary may be made in his final payment.
- (4) All township trustees, regardless of how they are paid, are required by R.C. 505.24 to keep an itemized statement of their per diem accounts.