

OPINION 65-18**Syllabus:**

1. The requirement that all laws operate uniformly does not mean that all county court judges within a county court district are entitled to the increase in compensation provided for in the amendment to Section 1907.082, Revised Code, enacted by the 105th General Assembly (effective December 18, 1964) without regard to their term of office.

2. Only those county court judges whose terms commence after the effective date (December 18, 1964) of the amendment to Section 1907.082, Revised Code, are entitled to the increase in compensation provided therein.

To: John J. Malik, Jr., Belmont County Pros. Atty., St. Clairsville, Ohio
By: William B. Saxbe, Attorney General, February 5, 1965

Your request for my opinion reads as follows:

"Belmont County has three County Court Judges; one of the Judges was elected in

November of 1964 and will start his new term in 1965. The other two Judges were elected in November of 1962 for a four-year period. We have received information that at the recent session of the Legislature, House Bill Number 15 amending Section 1907.082 of the Ohio Revised Code has been passed and signed by the Governor immediately. It is our thought that under House Bill Number 15 the newly elected Judge will be entitled to an increase in salary of \$1,000.00. The other two Judges contend that the law states that the salaries of the County Court Judges are to be uniform.

"The specific question that we are asking is whether the three County Court Judges of the above-set facts are entitled to the increase for the year of 1965 under House Bill Number 15."

Section 1907.082, Revised Code (amended effective December 18, 1964), to which you refer, reads as follows:

"In addition to the compensation provided in section 1907.081 of the Revised Code, the board of county commissioners may provide for payment of a fixed annual amount, not to exceed two thousand dollars, to each county court judge."

Section 1907.081, Revised Code, referred to in the above section reads:

"Judges of the county court shall receive as compensation one thousand five hundred dollars per annum plus an additional amount equal to three cents per capita of the population of the county court district as determined by the last federal decennial census. Such additional amount shall not exceed the sum of two thousand five hundred dollars per annum.

"The compensation of judges of the county court shall be paid in semimonthly installments payable from the treasury of the county in which the court is situated.

"A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office."

The provisions of these sections were considered in my Opinion No. 812, Opinions of the Attorney General for 1957, at page 320; and my Opinion No. 1907, Opinions of the Attorney General for 1958 at page 196. My answer in each of these opinions was made with reference to Section 20, Article II of the Ohio Constitution. This section reads:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers, but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

(Emphasis added)

It is axiomatic that a county court judge is an officer of the state within the meaning of the Ohio Constitution.

It is stated in State, ex rel. Landis v. Commissioners, 95 Ohio St., 157 at page 159, as follows:

"The chief and most decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and by the fact that such duties are conferred upon the appointee by law. If official duties are prescribed by statute, and their performance involves the exercise of continuing, independent, political or governmental functions, then the position is a public office and not an employment."

I also cite you to Section 3 of Amended Substitute House Bill No. 14 (special session 105th General Assembly) which reads as follows:

"This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that the constitution prohibits increases of judicial salaries during term and that failure to adopt the measure effective immediately will work inequities upon present judges; and increase the possibility of further losses of competent judges by resignation. Therefore this act will go into immediate effect."

(Emphasis added)

Against this background, it is clear that only the judge who

will take office in January of 1965 is entitled to the salary increase provided by the amendment to Section 1907.082 of the Revised Code. Amended Substitute House Bill No. 14 was specifically made an emergency measure so that any new judges taking office in January would be entitled to the increase in salary, the increase being in effect prior to their taking office. Otherwise, new judges would have to wait until the end of their four year term before becoming entitled to the salary increase, because of the constitutional prohibition against increasing the salary of an officer during his existing term of office.

The fact that the law requires the salaries of the county court judges to be uniform does not change my conclusion.

The matter of uniformity of salary originally arose regarding the question of the power of the county commissioners to give additional compensation as set out in Section 1907.082, Revised Code. Section 1907.082, Revised Code, states:

"In addition to the compensation provided in Section 1907.081, of the Revised Code, the board of county commissioners may provide for payment of a fixed annual amount, not to exceed one thousand dollars, to each county court judge."

This section has been interpreted to mean that the "additional compensation" must be paid uniformly and not arbitrarily meted out in differing amounts to different persons. See Opinion No. 812, Opinions of the Attorney General for 1957.

In Opinion No. 812, supra, I cited with favor the case of State, ex rel. Godfrey v. O'Brien, 95 Ohio St., 166. Paragraph five (5) of the syllabus of this case states:

"'5. The provisions of an act of the General Assembly purporting to confer authority upon the * * * Board of County Commissioners, to fix the salary of county or township officers within certain limits, without providing a uniform rule for determining such compensation in the several counties of the state, are in conflict with Section 26 of Article II of the Constitution of Ohio, and void.'

"Under the statute in its present form, the Board of County Commissioners in each of the 88 counties could adopt a different formula for fixing salaries, which would not be in conformity with Section 26, Article II of the Constitution. This Court is of the opinion that there is a definite lack of direction in Section 1907.47, Revised Code, as to the manner or method of fixing annual salaries for justices of the peace, which renders the section unconstitutional."

Uniformity, then, requires only that the additional compensa-

tion be given equally to all within the class who are entitled; and an officer presently in office is not entitled to an increase in salary due to the constitutional prohibition against the raising of a salary of a public official during his term of office.

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

1. The requirement that all laws operate uniformly does not mean that all county court judges within a county court district are entitled to the increase in compensation provided for in the amendment to Section 1907.082, Revised Code, enacted by the 105th General Assembly (effective December 18, 1964) without regard to their term of office.

2. Only those county court judges whose terms commence after the effective date (December 18, 1964) of the amendment to Section 1907.082, Revised Code, are entitled to the increase in compensation provided therein.