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1. COUNTY COMMISSIONERS—SECTION 3001-1 G. C. WHICH AFFORDS SALARY INCREASES FOR DEFINITE TERMS OF OFFICE, PRECLUDES ALL COUNTY COMMISSIONERS OR APPOINTEES WHO DO NOT COME WITHIN DESCRIPTIVE TERMS OF STATUTE.
2. SALARY INCREASES—APPLY TO SPECIFIC TERMS OF OFFICE—APPOINTEE TO UNEXPIRED TERM WHICH DOES NOT COME WITHIN SCOPE OF STATUTE, NOT ENTITLED TO SALARY INCREASE—APPOINTMENT MADE AFTER EFFECTIVE DATE OF STATUTE ALLOWING INCREASE.
3. SALARY INCREASE WHICH APPLIES TO TERM OF OFFICE RATHER THAN INCUMBENT—DOES NOT AFFECT APPOINTEE TO UNEXPIRED TERM OF COMMISSIONER WHOSE TERM BEGAN IN JANUARY, 1947.

SYLLABUS:

1. Section 3001-1, General Code, which affords salary increases for definite terms of office, precludes all county commissioners or appointees who do not come within the descriptive terms of the statute.

2. Salary increases afforded by Section 3001-1, General Code, apply to specific terms of office, and an appointee to an unexpired term which does not come within the scope of the statute is not entitled to the salary increase, even though his appointment was made after the effective date of the statute allowing the increase.

3. The salary increase afforded by Section 3001-1, General Code, which applies to "term of office" rather than to the incumbent of said office, does not affect an appointee to the unexpired term of a commissioner whose term began in January, 1947.

Columbus, Ohio, October 11, 1949

Hon. Luther L. Liggett, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir :

Your letter requesting my opinion reads as follows:

"There is submitted herewith for your consideration and written opinion a request from the County Auditor of Union

County regarding the annual compensation of a county commissioner.

“A county commissioner was elected for a term of four years at the November 1946 General Election, and entered into his office January, 1947. This elected commissioner died during March, 1949, and his successor was appointed to fill this vacancy March 28, 1949, to serve out the unexpired term.

“The County Auditor has asked me to determine whether the newly appointed commissioner is entitled to receive only the annual compensation provided for in G. C. Section 3001, which the deceased commissioner would have received, or whether he is entitled to receive the additional compensation provided for by G. C. Section 3001-1.”

The judicial decisions of Ohio indicate unquestionably that the salary of an appointee to a vacancy in a public office is controlled by the law in effect at the time his appointment was made, and not by the law in effect at the time his predecessor was elected for the term he is to complete.

See :

State ex rel. Pugh v. Tanner, 27 O. C. A. p. 385 ;
State ex rel. Glander v. Ferguson, 148 O. S. p. 581 ;
Opinions of the Attorney General for 1943, p. 35.

However, salary increases are sometimes limited and restricted to those offices falling within the descriptive terms of the statute allowing the increase. Therefore, an examination of Section 3001-1, General Code, becomes necessary. This section reads as follows :

“(a) County commissioners whose terms commence on the first Monday in January, 1949, shall receive, in addition to the annual compensation fixed, limited or determined by Section 3001 of the General Code, during the period beginning on the first Monday in January, 1949, and ending on the Sunday immediately preceding the first Monday in January, 1953, an amount equal to thirty per cent of their annual compensation as fixed by said section 3001, provided, however, the annual compensation of each such county commissioners during the period referred to in this paragraph shall not be less than \$1500.00 nor more than \$7200.00.

“(b) County commissioners whose terms commence on the first Monday in January, 1951, shall receive, in addition to the annual compensation fixed, limited or determined by Section 3001 of the General Code, during the period beginning on the first Monday in January, 1951, and ending on the Sunday immediately

preceding the first Monday in January, 1955, an amount equal to thirty per cent of their annual compensation as fixed by said Section 3001, provided, however, the annual compensation of each of such county commissioners during the period referred to in this paragraph shall not be less than \$1500.00 nor more than \$7200.00."

It will be noted that part (a) of this statute applies only to the county commissioners whose terms commence on the first Monday in January, 1949. It may also be noted that the office of the third commissioner or of those commissioners whose terms commence on the first Monday in January, 1951, are affected by part (b) of this section of the General Code.

The obvious purpose of this enactment was to increase the salary of all of the commissioners for one four-year term, but since the office of one of the commissioners of a county begins and ends at a different time than the other two, it became necessary to definitely state in the statute the particular office and term to be affected by the increase.

If Section 3001-1 was intended to govern all commissioners, as such, without regard for their respective terms of office, it would have been unnecessary for the legislature to definitely stipulate the terms of office to be affected by the increase.

The appointee referred to in your communication is, therefore, only affected by part (b) of Section 3001-1 of the General Code. He holds office instead of the commissioner whose term would ordinarily commence on the first Monday in January, 1951, and end on the Sunday immediately preceding the first Monday in January, 1955.

And accordingly, his salary is not increased by Section 3001-1 of the General Code unless his incumbency extends beyond the first Monday in January, 1951, at which time the office he now holds as commissioner will come within the purview of the statute.

It is therefore my opinion, in specific answer to your question, that:

1. Section 3001-1, General Code, which affords salary increases for definite terms of office, precludes all commissioners or appointees who do not come within the descriptive terms of the statute.

2. Salary increases afforded by Section 3001-1, General Code, apply to specific terms of office, and an appointee to an unexpired term which does not come within the scope of the statute is not entitled to the salary increase, even though his appointment was made after the effective date of the statute allowing the increase.

3. The salary increase afforded by Section 3001-1, General Code, which applies to "term of office" rather than to the incumbent of said office, does not affect an appointee to the unexpired term of a commissioner whose term began in January, 1947.

Respectfully,

HERBERT S. DUFFY,
Attorney General.