

Note from the Attorney General's Office:

2016 Op. Att'y Gen. No. 2016-020 was followed by
2019 Op. Att'y Gen. No. 2019-018.

June 21, 2016

The Honorable J. Hawken Flanagan
Henry County Prosecuting Attorney
822 Oakwood Avenue
P.O. Box 605
Napoleon, Ohio 43545

SYLLABUS:

2016-020

1. The City of Napoleon and Henry County are responsible for their respective portions of employer contributions to the Public Employees Retirement System in relation to the amount of salary they pay to the Napoleon Municipal Court judge, clerk, and bailiff who are Public Employees Retirement System contributors.
2. The City of Napoleon and Henry County are responsible for their respective contributions to the state workers' compensation fund in relation to the amount of salary they pay to the Napoleon Municipal Court judge, clerk, and bailiff.
3. The City of Napoleon and Henry County are responsible for their respective payments of employer-paid Medicare taxes in relation to the amount of salary they pay to the Napoleon Municipal Court judge, clerk, and bailiff.
4. Inasmuch as health insurance premium payments are a part of the health care coverage procured for the Napoleon Municipal Court judge or clerk from insurance companies authorized to engage in the business of insurance in this state under R.C. Title 39 or health insuring corporations holding certificates of authority under R.C. Chapter 1751, the payment of those premiums is subject to the fractional division between the City of Napoleon and the Henry County treasuries set forth in R.C. 1901.111(C)(2) and R.C. 1901.312(C)(2)(a).
5. Payment of the Napoleon Municipal Court bailiff's health care coverage, as a part of the bailiff's total compensation, is subject to the fractional division between the City of Napoleon and Henry County treasuries set forth in R.C. 1901.11(C).



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

June 21, 2016

OPINION NO. 2016-020

The Honorable J. Hawken Flanagan
Henry County Prosecuting Attorney
822 Oakwood Avenue
P.O. Box 605
Napoleon, Ohio 43545

Dear Prosecutor Flanagan:

Your predecessor requested an opinion concerning a county's responsibility to pay certain costs associated with the statutory compensation of the judge, clerk of court, and bailiff of the Napoleon Municipal Court. We have rephrased the questions for ease of discussion. Specifically, your office would like to know:

1. Whether employer contributions to the Public Employees Retirement System are subject to the fractional division between the city and the county of the compensation of municipal court judges set forth in R.C. 1901.11(C);
2. Whether employer contributions to the state workers' compensation fund are subject to the fractional division between the city and the county of the compensation of municipal court judges set forth in R.C. 1901.11(C);
3. Whether employer payments of Medicare taxes are subject to the fractional division between the city and the county of the compensation of municipal court judges set forth in R.C. 1901.11(C); and
4. Whether health insurance premiums are subject to the fractional division between the city and the county of the health care coverage of municipal court judges set forth in R.C. 1901.111(C)(2).

You also ask how the fractional division between the City of Napoleon and Henry County, as set forth in the questions above, applies to the Napoleon Municipal Court clerk and bailiff. We will begin by explaining the relevant background and statutory schemes pertinent to your questions.

Structure of the Napoleon Municipal Court

Municipal courts are created pursuant to statutes enacted by the General Assembly in accordance with its constitutional authority to establish courts inferior to the Ohio Supreme Court and provide for their maintenance and employees. 2005 Op. Att’y Gen. No. 2005-032, at 2-335; *see* Ohio Const. art. IV, § 1; R.C. 1901.01; *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 32, 222 N.E.2d 798 (Stark County 1966). R.C. Title 19 concerns courts in Ohio, and R.C. Chapter 1901 specifically addresses municipal courts. R.C. 1901.01(A) establishes a municipal court in numerous municipal corporations in Ohio, including Napoleon. Pursuant to R.C. 1901.02(B), the Napoleon Municipal Court has jurisdiction within Henry County.¹

The Napoleon Municipal Court has one full-time judge who is elected for a term of six years. R.C. 1901.07(A); R.C. 1901.08. In the Napoleon Municipal Court, because the population of the court’s territory is less than 100,000, the municipal court clerk is appointed by the court and holds office until the clerk’s successor is appointed and qualified. R.C. 1901.31(A)(2)(a); *see generally* R.C. 1901.31(A)(1) (when the population of a municipal court’s territory equals or exceeds 100,000, the municipal court clerk is nominated and elected by the qualified electors of the territory). The Napoleon Municipal Court bailiff is appointed by the court pursuant to the terms of R.C. 1901.32(A)(1).

¹ Some municipal courts are designated as county-operated municipal courts. *See* R.C. 1901.03(F) (listing the county-operated municipal courts). County-operated municipal courts are funded differently from municipal courts that are not county-operated. *Compare, e.g.,* R.C. 1901.024(D) (“[t]he board of county commissioners of a county in which a county-operated municipal court is located shall pay all of the costs of operation of the municipal court”), *with* R.C. 1901.026(A) (“[t]he current operating costs of a municipal court, other than a county-operated municipal court, that has territorial jurisdiction ... extend[ing] beyond the corporate limits of the municipal corporation in which the court is located shall be apportioned pursuant to this section among all of the municipal corporations and townships that are within the territory of the court”).

While the Napoleon Municipal Court has jurisdiction within all of Henry County, R.C. 1901.02(B), it is not a county-operated municipal court. *See* R.C. 1901.03(F). Accordingly, this opinion does not address the compensation, health care coverage, Public Employees Retirement System (PERS) contributions, state workers’ compensation fund contributions, or Medicare taxes of judges, clerks, or bailiffs of a county-operated municipal court.

Compensation of Napoleon Municipal Court Judge, Clerk, and Bailiff

Under Ohio Const. art. IV, § 6(B), municipal court judges “receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office.” *See* 2005 Op. Att’y Gen. No. 2005-032, at 2-335 to 2-336. The Napoleon Municipal Court has one full-time judge, whose compensation is set by R.C. 1901.11. His compensation includes: (1) an amount set by R.C. 1901.11(B)(1)(a) and (B)(2), paid pursuant to R.C. 1901.11(C); and (2) an amount paid by the state in accordance with R.C. 1901.11(B)(1)(b) and R.C. 141.04(A)(5). *See generally* 2005 Op. Att’y Gen. No. 2005-032, at 2-337 (describing the components of a municipal court judge’s compensation).

Your questions concern the first part of the judge’s compensation that is paid pursuant to R.C. 1901.11(C), with three-fifths of the amount payable from the city treasury and two-fifths payable from the county treasury.² This fractional division between a municipal corporation and a county is described in R.C. 1901.11(C):

(C) The compensation of municipal judges that is described in divisions (A)(1) and (B)(1)(a) and (2) of this section may be paid in either biweekly installments or semimonthly installments, as determined by the payroll administrator, three-fifths of the amount being payable from the city treasury and two-fifths of the amount being payable from the treasury of the county in which the municipal corporation is situated....

Accordingly, the City of Napoleon pays three-fifths of the Napoleon Municipal Court judge’s compensation and Henry County pays two-fifths of the judge’s compensation.

A municipal court clerk’s compensation is determined pursuant to R.C. 1901.31(C)(1) and (2) and on the basis of the population of the court’s territory and the court’s revenues. A municipal court bailiff’s compensation is prescribed by the municipal court pursuant to R.C. 1901.32(A)(1). R.C. 1901.31 and R.C. 1901.32 provide that the compensation of the Napoleon Municipal Court clerk and bailiff, respectively, shall be paid “from the same sources and in the same manner as provided in [R.C. 1901.11]”—that is, three-fifths of the amount is payable from the City of Napoleon treasury and two-fifths of the amount is payable from the Henry County treasury. R.C. 1901.31(C)(3); R.C. 1901.32(A)(1); *see also* 2013 Op. Att’y Gen. No. 2013-041, at 2-397 (R.C. 1901.11(C) is incorporated by reference in R.C. 1901.32(A)(1)); 2003 Op. Att’y Gen. No. 2003-020, at 2-157 (same); 1965 Op. Att’y Gen. No. 65-056, at 2-107 (same). Thus, compensation of the Napoleon Municipal Court clerk and bailiff is payable from the City of

² This fractional division does not apply to amounts paid by the state pursuant to R.C. 141.04, under which municipal court judges receive prescribed amounts of compensation from the state treasury in addition to the amounts received from municipal and county treasuries pursuant to R.C. 1901.11. *See* R.C. 141.04(A)(5); R.C. 1901.11(B)(1)(b).

Napoleon treasury and the Henry County treasury according to the fractional division set forth in R.C. 1901.11(C).

The Meaning of the Term “Compensation”

You have asked whether several types of employer contributions and fringe benefit payments are included within the meaning of “compensation” for purposes of R.C. 1901.11(C). R.C. 1901.11(C) sets forth the fractional division of the Napoleon Municipal Court judge’s, clerk’s, and bailiff’s compensation between the City of Napoleon treasury and the Henry County treasury, and you wish to know whether the same fractional division applies to the additional employer contributions and fringe benefit payments. We begin with the common law understanding of the term “compensation.”

The statutory authority to fix “compensation” includes the authority to establish both salary and fringe benefits, such as medical insurance, life insurance, and paid leave, in the absence of any statute that constricts such authority, and so long as such benefits are in excess of any minimum levels established by statute. *Ebert v. Stark Cnty. Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 33, 406 N.E.2d 1098 (1980); *see State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (fringe benefits such as the county’s payment of health insurance premiums on behalf of county officers and employees “are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check”); *Madden v. Bower*, 20 Ohio St. 2d 135, 137, 254 N.E.2d 357 (1969) (“[t]he purpose of an employer, whether public or private, in extending ‘fringe benefits’ to an employee is to induce that employee to continue his current employment,” and the payment of insurance premiums for a county employee “is a part of the cost of the public service performed by such employee”); 1982 Op. Att’y Gen. No 82-006, at 2-16 to 2-17 (“a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his current employment”).

However, notwithstanding this common law understanding of compensation, the General Assembly has limited the meaning of the term “compensation” for specific statutory schemes. R.C. 1901.11 limits the meaning of the term “compensation” to exclude certain fringe benefits. We discuss these limitations with specificity below.

Question 1: Employer Contributions to the Public Employees Retirement System

First, you wish to know whether payments of employer contributions to the Public Employee Retirement System (PERS) on behalf of the judge of the Napoleon Municipal Court are subject to the fractional division between the City of Napoleon and Henry County of the compensation of a municipal court judge set forth in R.C. 1901.11(C). Participation in PERS is governed by R.C. Chapter 145. In general, public employees are required to be contributors to PERS. R.C. 145.03(A) (with certain exceptions, “membership in the system is compulsory upon being employed and shall continue as long as public employment continues”); *see generally* R.C.

145.01(A), (F) (definitions of “public employee” and PERS “contributor”). “Public employee” means, *inter alia*:

[a]ny person holding an office, not elective, under the state or any county, township, municipal corporation, ... authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in [R.C. 145.01(A)(1)], or employed and paid in whole or in part by the state or any of the authorities named in [R.C. 145.01(A)(1).]

R.C. 145.01(A)(1). Elected officials are expressly excluded from the definition of public employee found at R.C. 145.01(A), and, therefore, not covered by the PERS compulsory membership requirement of R.C. 145.03. 1989 Op. Att’y Gen. No. 89-087, at 2-413; 1956 Op. Att’y Gen. No. 6357, p. 213 (syllabus, paragraph 1). Elected officials thus are not required by law to become members of PERS but are permitted to become members pursuant to R.C. 145.20.

For the purpose of your questions, this means that the Napoleon Municipal Court judge may choose to become a member of PERS, and it is our understanding that he has made this election. *See generally* 1952 Op. Att’y Gen. No. 1872, p. 712 (syllabus, paragraph 3) (“[t]he judge of a municipal court is to some extent an elected officer of each municipal corporation located in the territory of such court, and he may, as such municipal officer, under the provisions of [former G.C. 486-48, now R.C. 145.20], elect to become a member of [PERS]”). The Napoleon Municipal Court clerk and bailiff are “public employees” pursuant to R.C. 145.01(A) and required to be PERS members. *See* R.C. 145.03(A). *See generally* R.C. 1901.07 (election of municipal court judges); R.C. 1901.31 (describing how it is determined whether a municipal court clerk is elected or appointed); R.C. 1901.32 (municipal court bailiffs are appointed); *State v. Sanders*, Mahoning App. No. 01-C.A.-14, 2002-Ohio-2656, 2002 Ohio App. LEXIS 2770, at ¶20 (“[m]unicipal court bailiffs are clearly officers, agents, or employees of the state or its agencies”); 2013 Op. Att’y Gen. No. 2013-041, at 2-398 (a municipal court bailiff is an employee of a municipal court); 1986 Op. Att’y Gen. No. 86-003, at 2-13 (“[a] municipal court bailiff is clearly an officer, agent, or employee of the state or one of its agencies, instrumentalities, or political subdivisions”).

Each public employer is required to deduct from the earnable salary of a PERS contributor a designated percentage of the contributor’s earnable salary, pay that amount to PERS, and also pay the designated employer contribution. R.C. 145.47-.48; *see* 1999 Op. Att’y Gen. No. 99-003, at 2-20. Contributions to PERS are based on a contributor’s “earnable salary,” which is defined in R.C. 145.01(R)(1) to mean “all salary, wages, and other earnings paid to a contributor by reason of employment in a position covered by the retirement system.”

R.C. 145.48(A) declares that “[e]ach employer shall pay to the public employees retirement system an amount that shall be a certain per cent of the earnable salary of all contributors to be known as the ‘employer contribution’” and R.C. 145.51(A) states that “[e]ach employer ... shall pay into the employers’ accumulation fund ... an amount certified by the

public employees retirement board, which equals the employer obligation[.]” *See* 2007 Op. Att’y Gen. No. 2007-012, at 2-115 (“[e]mployers covered by R.C. Chapter 145 are statutorily mandated to contribute to PERS, and have no ability to fix the amount of contributions they pay on behalf of their employees, either on an individual basis or as a group”). The definition of “employer” or “public employer” as used in R.C. Chapter 145 includes “the state or any county, township, [or] municipal corporation” among several other entities. R.C. 145.01(D).

Although employer contributions to PERS are calculated as a percentage of the salaries of employees who are PERS contributors, the employer contributions are not compensation to the employees. 1989 Op. Att’y Gen. No. 89-087, at 2-413 (“the purpose of the statutorily required employer contribution to PERS is not to add to the compensation of the individual with respect to whom the contribution is made. Rather, it is intended for the benefit of public employees as a group”); *see* 2007 Op. Att’y Gen. No. 2007-012 (syllabus, paragraph 9). Accordingly, employer contributions to PERS, unlike a salary or compensation paid to a public officer or public employee, are not remuneration for services rendered.

Even though it is established that employer contributions to PERS are not part of a person’s compensation, this does not resolve the question of which entity is responsible for paying the employer contributions to PERS on behalf of the Napoleon Municipal Court judge. Responsibility to make employer contributions to PERS depends upon the determination of an “employer” for purposes of R.C. Chapter 145. We now turn to a consideration of which subdivision or entity constitutes the “employer” of the Napoleon Municipal Court judge for purposes of R.C. Chapter 145.

Question 1: Characterization of the Relationship Between a County, Municipal Corporation, and the Officers and Employees of a Municipal Court

Opinions of the Attorney General have considered whether a municipal court judge is a county officer or a municipal officer for purposes of various statutory schemes. *See, e.g.*, 1992 Op. Att’y Gen. No. 92-070, at 2-295 (“when the question has been presented, the weight of authority has favored classifying municipal court judges and clerks as municipal officers, rather than as state officers. For many of the same reasons, one may properly conclude that the judges and clerk of a municipal court that is other than county-operated are not ‘county officers’ for purposes of R.C. 309.09(A),” which makes a prosecuting attorney legal counsel for county officers); 1990 Op. Att’y Gen. No. 90-110 (syllabus, paragraph 4) (“[t]he various compensating authorities within a municipal court ... are given discretion to determine, upon examination of the operation of the municipal court ... whether its employees are county employees for purposes of the minimum vacation and holiday benefits prescribed by R.C. 325.19”); 1990 Op. Att’y Gen. No. 90-092, at 2-395 (“R.C. 305.171 does not authorize the board of county commissioners to provide health insurance benefits for the judges of the Licking County Municipal Court” since the judges are not county officers); 1952 Op. Att’y Gen. No. 1872, p. 712 (syllabus, paragraphs 3 and 4) (municipal court judge and clerk are “to some extent an officer of each municipal corporation located within the territory of such court”). In particular, 1990 Op. Att’y Gen. No.

90-110, at 2-488 to 2-491, included the following discussion concerning municipal court personnel:

It appears ... that municipal courts have no universal identity within R.C. Chapter 124 as entities of the state or one of the other subdivisions listed in R.C. 124.01(A). For example, specific provision is made in R.C. 1901.32(B) for placement of personnel of the Cleveland Municipal Court in the civil service of the city of Cleveland. *See generally Engel v. Corrigan*, 12 Ohio App. 3d 34, 465 N.E.2d 932 (Cuyahoga County 1983). In contrast to the *Engel* decision, the court in *Dugan v. Civil Service Commission*, [9 Ohio App. 3d 218, 459 N.E.2d 618 (Summit County 1983)], found that deputy clerks of the Akron Municipal Court are not within the jurisdiction of the Akron Civil Service Commission. After noting the fact that municipal court employees are encompassed within the civil service system governed by R.C. Chapter 124 the court noted that the Akron Municipal Court has territorial jurisdiction beyond the City of Akron....

....

From the foregoing examination of the features of the state system for municipal courts, it is readily apparent that the municipal courts are not susceptible to uniform identification as entities of the state or one of its political subdivisions. This lack of uniformity creates numerous problems in determining the amount and types of compensation provided by statute which may be payable to municipal court personnel. In this regard, I note that the General Assembly has provided by statute for various types of municipal court personnel and has prescribed the authority empowered to fix their compensation....

....

These statutes demonstrate that with regard to the compensation of municipal court personnel, there is no single authority within a municipal court that is empowered to prescribe the compensation of all the court's personnel. Further, the entity with authority to fix the compensation for a particular position may vary from court to court. In light of these differences, it is not possible to set forth a general rule concerning the compensation to which municipal court personnel are entitled.

Likewise, courts have come to varied conclusions concerning the characterization of the office of municipal court judge. *See, e.g., Walker v. Goldie*, No. 3:07CV281, 2008 WL 4449010, at *14 (S.D. Ohio, W. Div. Sept. 26, 2008) (“[a] judge of an Ohio Municipal Court is neither a municipal nor a county employee, but rather an elected officer of the State of Ohio” (footnote omitted)); *State ex rel. Higley v. Shale*, 137 Ohio St. 311, 313, 29 N.E.2d 214 (1940) (“a municipal judge is neither a state nor county officer”); *State v. Smith*, No. 46171, 1983 WL 2787, at *4 (Cuyahoga County Ct. App. Nov. 17, 1983) (“we conclude that a Cleveland Municipal Court judge is a ‘state officer, agent, or employee’ for the purpose of [R.C. 2921.51]”).

These examples demonstrate the possibility of various conclusions concerning the characterization of the office of municipal court judge. The General Assembly has not enacted a single way to characterize municipal court personnel, and we do not find it necessary to make

such a general conclusion for the purpose of answering your questions. Rather, the conclusion we reach concerning which entity acts as the Napoleon Municipal Court judge's "employer" is tied to the specific language of the statutory scheme that makes that determination necessary. We find that for the purpose of paying employer contributions to PERS, Henry County and the City of Napoleon are "employers" of the judge of the Napoleon Municipal Court under R.C. Chapter 145. This conclusion is supported by pertinent opinions of the Attorney General and the language of R.C. 145.12.

1992 Op. Att'y Gen. No. 92-044 (syllabus, paragraph 6) concluded that, if an employee is compensated directly by two public entities, both entities are "employers" for purposes of R.C. Chapter 145 and shall pay employer contributions to PERS in proportion to the respective amount of compensation each entity pays directly to the employee.³ When a person is an "employee" of two governmental units for purposes of PERS, each employer is responsible for making the employer contributions attributable to the portion of the salary paid from that employer's treasury. 1946 Op. Att'y Gen. No. 850, p. 240 (syllabus) (answering a question identical to the present question); *see also* 1990 Op. Att'y Gen. No. 90-110, at 2-495; 1984 Op. Att'y Gen. No. 84-036, at 2-115 (considering employer "pick-up" of employee PERS contributions and concluding that there is "no provision of law which would require one unit of government to pick up an officer's or employee's retirement contribution merely because another governmental unit which pays part of the officer's or employees' compensation does so. The

³ 2007 Op. Att'y Gen. No. 2007-012 advised that employer contributions to PERS and the state workers' compensation system did not constitute "compensation" fixed and paid to county law librarians under R.C. 3375.48 and thus were not subject to allocation between the board of trustees of a county law library association (*i.e.*, library board) and a board of county commissioners under R.C. 3375.49. We agree with the opinion's conclusion that employer contributions to PERS and the state workers' compensation system do not constitute "compensation." We decline to extend its conclusions regarding the allocation of those contributions in the case of the judge, clerk, and bailiff of the Napoleon Municipal Court.

The 2007 opinion addressed a county law library association, which was organized as a private association or nonprofit corporation that was partially funded by county monies. R.C. 145.01(D) made the "county law library," which was operated by the county law library association, the "employer" or "public employer" of persons employed in the county law library as librarians. The General Assembly had enacted legislation intended to transfer "from the counties to the county law library associations, the duty to pay certain expenses incurred by the law library associations." 2007 Op. Att'y Gen. No. 2007-012, at 2-101. These expenses included the librarians' compensation, the amount of which was fixed by the judge of each court of common pleas. Under the pertinent legislation, each county law library association would become responsible for paying the entire amount of the librarians' compensation in 2011. The rationale of the 2007 opinion regarding the allocation of contributions to PERS and workers' compensation was thus based, in part, upon its anticipation of this transfer of responsibility.

obligations of each governmental unit are separate and distinct from those of other governmental authorities”). R.C. 145.12 provides that the payment of employer contributions to PERS “may be made directly out of any funds, whether derived from taxation or otherwise, from which the salaries or compensation of public employees, on account of whom such payments are to be made, are payable.” *See* 2004 Op. Att’y Gen. No. 2004-036, at 2-325 to 2-326. Thus, “employer” status for purposes of R.C. Chapter 145 is related to the responsibility of an entity to pay some or all of a person’s compensation.

We find further support for this conclusion in the Legislative Service Commission’s note accompanying 2004 legislation to change the Napoleon Municipal Court judgeship from a part-time position to a full-time position. Ohio Legisl. Serv. Comm’n, Fiscal Note & Local Impact Statement, 125th Gen. A. (May 25, 2004) (Sub. H.B. 38, as enacted, eff. June 17, 2004). In describing the local fiscal impact of the legislation, the note sets forth “the annual amount that the City of Napoleon will expend to support the conversion of a part-time municipal court judge to full-time status[.]” *Id.* The estimate includes “salary, ... PERS contributions, and ... miscellaneous other contributions.” *Id.* The same note sets forth “the annual amount that Henry County will expend to support their portion of the conversion of a part-time municipal court judge to full-time status[.]” *Id.* It “consists of net increases ... in salary, ... PERS contributions, and ... miscellaneous other contributions.” *Id.*

We have determined that employer contributions to PERS are not part of compensation. While R.C. 1901.11(C) applies the fractional division of payment between the City of Napoleon and Henry County only to a municipal court judge’s “compensation,” the City of Napoleon and Henry County are nonetheless required by R.C. Chapter 145 to contribute their respective amounts of employer contributions to PERS.

Question 1: Conclusion Applies Equally to Municipal Court Clerk and Bailiff

The conclusion above applies equally to the clerk and the bailiff of the Napoleon Municipal Court. Their compensation is paid “from the same sources and in the same manner” as provided in R.C. 1901.11, which means that their salaries are subject to the fractional division of payment between the City of Napoleon and Henry County treasuries. R.C. 1901.31(C)(3); R.C. 1901.32(A)(1). The City of Napoleon and Henry County are thus responsible for their respective portions of employer contributions to PERS tied to the amount of salary they pay to the Napoleon Municipal Court clerk and bailiff.

Question 2: Employer Contributions to State Workers’ Compensation Fund

You next ask whether employer contributions to the state workers’ compensation fund are subject to the fractional division between the City of Napoleon and Henry County of the compensation of municipal court judges set forth in R.C. 1901.11(C). Workers’ compensation is governed by R.C. Chapter 4123. The workers’ compensation statutes require employers, including counties and municipal corporations, to pay premiums to provide a fund for workers’ compensation and to maintain a state insurance fund. *See* 1997 Op. Att’y Gen. No. 97-032, at 2-

184. Workers' compensation premiums are not part of an officer or employee's compensation. *See, e.g.*, 2007 Op. Att'y Gen. No. 2007-012, at 2-103 n.2 ("contributions paid by an employer to [PERS], the state unemployment compensation fund, and the workers' compensation state insurance fund are not fringe benefits, and do not constitute 'compensation'"); 1980 Op. Att'y Gen. No. 80-002, at 2-16 (overruled, in part, on other grounds) ("the entire purpose of the statutorily mandated workers' compensation contributions is not to add to the compensation of the individual employee on whose behalf contributions are made....[M]andatory workers' compensation contributions protect the state as much as the individual and cannot fairly be viewed in the same category as take-home pay under traditional notions of an employee's compensation package. Such payments are not, therefore, properly viewed as fringe benefits").

Accordingly, employer contributions to the state workers' compensation fund are not part of a person's compensation. Notwithstanding this characterization of employer contributions to workers' compensation, we proceed to consider employer contributions to workers' compensation in the same way we have analyzed employer contributions to PERS. Responsibility to make employer contributions to workers' compensation depends upon the identification of an "employer" for purposes of R.C. Chapter 4123. In order to resolve your question, we now turn to a consideration of which subdivision or entity constitutes the "employer" of the judge of the Napoleon Municipal Court for purposes of R.C. Chapter 4123.

Our discussion above under Question 1 demonstrates the possibility of various conclusions concerning the characterization of the office of municipal court judge. The General Assembly has not enacted a single way to characterize municipal court personnel. The conclusion we reach concerning which entity acts as the Napoleon Municipal Court judge's "employer" is tied to the specific language of the statutory scheme we are examining. We find that for the purpose of paying employer contributions to the state workers' compensation fund, Henry County and the City of Napoleon are "employers" of the judge of the Napoleon Municipal Court under R.C. Chapter 4123. This conclusion is supported by the general language of R.C. Chapter 4123 and the Legislative Service Commission's fiscal impact note accompanying 2004 legislation to change the Napoleon Municipal Court judgeship from a part-time position to a full-time position.

"Every public employer, except public employers that are self-insuring employers under [R.C. 4123.35], shall comply with [R.C. 4123.38-.41 and R.C. 4123.48] in regard to the contribution of moneys to the public insurance fund." R.C. 4123.35(A). "Employer" includes, *inter alia*, the state, each county, and each municipal corporation. R.C. 4123.01(B)(1). "Every employer mentioned in [R.C. 4123.01(B)(1)] ... shall contribute to the public insurance fund the amount of money determined by the administrator of workers' compensation[.]"⁴ R.C. 4123.38.

⁴ R.C. 4123.39 states:

Each year, the Bureau of Workers' Compensation requires each county and municipal corporation to report the amount of money expended during the previous year "for the services of employees under [R.C. Chapter 4123]" based on actual payrolls. R.C. 4123.41(A)(2). "Employee" means "[e]very person in the service of the state, or of any county, [or] municipal corporation, ... including any elected official of the state, or of any county, [or] municipal corporation[.]" R.C. 4123.01(A)(1)(a). Thus, "employer" status for purposes of R.C. Chapter 4123 is related to the actual payroll of each county and municipal corporation and the concurrent responsibility to pay some or all of a person's compensation.

The Legislative Service Commission's note accompanying 2004 legislation to change the Napoleon Municipal Court judgeship from a part-time position to a full-time position lends further support. Ohio Legisl. Serv. Comm'n, Fiscal Note & Local Impact Statement, 125th Gen. A. (May 25, 2004) (Sub. H.B. 38, as enacted, eff. June 17, 2004). Under the heading "Other local costs," the note states: "[t]he City of Napoleon and Henry County will also make additional contributions for Medicare ... and workers['] compensation[.]" *Id.*

We have determined that employer payments to workers' compensation are not part of compensation. While R.C. 1901.11(C) applies the fractional division of payment between the City of Napoleon and Henry County only to a municipal court judge's "compensation," both the City of Napoleon and Henry County are nonetheless required by R.C. Chapter 4123 to contribute their respective amounts of employer contributions to the state workers' compensation fund.

Question 2: Conclusion Applies Equally to Municipal Court Clerk and Bailiff

The conclusion above applies equally to the clerk and bailiff of the Napoleon Municipal Court. Because their compensation is paid "from the same sources and in the same manner" as provided in R.C. 1901.11, their salaries are subject to the fractional division of payment between the city and county treasuries. R.C. 1901.31(C)(3); R.C. 1901.32(A)(1). Both the City of Napoleon and Henry County are thus responsible for their respective portions of employer

The administrator of workers' compensation shall determine the amount of money to be contributed under [R.C. 4123.38] by the state itself and each county and each taxing district within each county. In fixing the amount of contribution to be made by the county, for such county and for the taxing districts therein, the administrator shall classify counties and other taxing districts into such groups as will equitably determine the contributions in accordance with the relative degree of hazard, and also merit rate such individual counties, taxing districts, or groups of taxing districts in accordance with their individual accident experience so as ultimately to provide for each taxing subdivision contributing an amount sufficient to meet its individual obligations and to maintain a solvent public insurance fund.

contributions to the workers' compensation fund tied to the amount of salary they pay to the Napoleon Municipal Court clerk and bailiff.

Question 3: Employer Payments of Medicare Tax

You next ask whether employer payments of the Medicare tax are subject to the fractional division between the City of Napoleon and Henry County of the compensation of the Napoleon Municipal Court judge set forth in R.C. 1901.11(C). 26 U.S.C.A. §§ 3101 to 3128, also known as the Federal Insurance Contributions Act (FICA), impose certain taxes on employers and employees for the purpose of funding the Social Security program and the Medicare program. *See* 26 U.S.C.A. § 3128; 1988 Op. Att'y Gen. No. 88-021, at 2-79. Persons employed by a state or a subdivision thereof are exempt from the Social Security tax imposed by 26 U.S.C.A. § 3101(a) and § 3111(a). *See* 26 U.S.C.A. § 3121(b)(7). Persons employed by a state or subdivision thereof must, however, pay the hospital insurance tax imposed by 26 U.S.C.A. § 3101(b) and § 3111(b). *See* 26 U.S.C.A. § 3121(u)(2).

2010 Op. Att'y Gen. No. 2010-023, at 2-167, describes the manner in which FICA taxes, including the Medicare tax, are imposed:

FICA taxes are imposed on "wages" received with respect to "employment." I.R.C. §§ 3101(a)-(b) (West Supp. 2010) (individual's portion of tax); I.R.C. §§ 3111(a)-(b) (West Supp. 2010) (employer's portion of the tax). In turn, "employment" is defined, subject to numerous exceptions, as "any service" performed "by an employee for the person employing him," I.R.C. § 3121 (b) (West Supp. 2010), and an "employee" is "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee." I.R.C. § 3121(d)(2). The "employer" is required to withhold and pay the tax. I.R.C. § 3102(a); §§ 3111(a)-(b).

Your question concerns the employer-paid Medicare tax authorized by § 3111(b). The Internal Revenue Code has "special rules for withholding federal income taxes from employees of political subdivisions," 2010 Op. Att'y Gen. No 2010-023, at 2-166, and these rules carry over to the way in which Medicare taxes are withheld from public employees' wages. If an employer is a political subdivision of a state, the Medicare tax payments may be made by "any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose." I.R.C. § 3126 (West 2016). Thus, "employer" status for purposes of the employer-paid Medicare tax is related to the responsibility to pay some or all of a person's compensation. The City of Napoleon and Henry County are responsible for the payment of the Napoleon Municipal Court judge's compensation. Therefore, the City of Napoleon and Henry County both are responsible for the payment of employer Medicare taxes that correspond to the salary of the Napoleon Municipal Court judge.

This conclusion is further supported by the Legislative Service Commission's note accompanying 2004 legislation to change the Napoleon Municipal Court judgeship from a part-time position to a full-time position. Ohio Legisl. Serv. Comm'n, Fiscal Note & Local Impact Statement, 125th Gen. A. (May 25, 2004) (Sub. H.B. 38, as enacted, eff. June 17, 2004). Under the heading "Other local costs," the note states: "[t]he City of Napoleon and Henry County will also make additional contributions for Medicare ... and workers['] compensation[.]" *Id.*

While R.C. 1901.11(C) applies the fractional division of payment between the City of Napoleon and Henry County only to a municipal judge's "compensation," both the City of Napoleon and Henry County are nonetheless required by FICA, 26 U.S.C.A. § 3111(b), to make their respective amounts of Medicare tax payments.

Question 3: Conclusion Applies Equally to Municipal Court Clerk and Bailiff

The conclusion above applies equally to a municipal court clerk and a municipal court bailiff. Because their compensation is paid "from the same sources and in the same manner" as provided in R.C. 1901.11, their salaries are subject to the fractional division of payment between the city and county treasuries. R.C. 1901.31(C)(3); R.C. 1901.32(A)(1). Both the City of Napoleon and Henry County are thus responsible for their respective portions of employer payments of Medicare taxes tied to the amount of salary they pay to the Napoleon Municipal Court clerk and bailiff.

Question 4: Health Insurance Premium Payments Are Not Compensation Under R.C. 1901.11

You next ask about health insurance premium payments. We begin with the plain language of R.C. 1901.11(E), which qualifies the meaning of the term "compensation" for purposes of R.C. 1901.11:

(E) As used in this section, "compensation" does not include any portion of the cost, premium, or charge for sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services, covering a judge of a municipal court and paid on the judge's behalf by a governmental entity.

The plain language of R.C. 1901.11 thus excludes health insurance premiums from the meaning of the term "compensation" for purposes of R.C. 1901.11. *See Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph 2) ("the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction"); *accord State v.*

Hairston, 101 Ohio St. 3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶12; 2008 Op. Att’y Gen. No. 2008-002, at 2-8 to 2-9. Thus, under R.C. 1901.11, health insurance premium payments are not considered “compensation” for the purpose of applying the fractional division of payment between the municipal corporation and the county to a municipal judge’s compensation.

Question 4: Health Insurance Premium Payments for Municipal Court Judges Are Addressed by R.C. 1901.111

R.C. 1901.111 authorizes the purchase of health care insurance for municipal court judges and states that, as used in R.C. 1901.111, “health care coverage” “means sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services.” R.C. 1901.111(A). Pursuant to R.C. 1901.111(B), the legislative authority of the municipal corporation in which the municipal court is located, R.C. 1901.03(B), “shall negotiate and contract for, purchase, or otherwise procure group health care coverage ... from insurance companies authorized to engage in the business of insurance in this state under [R.C. Title 39] or health insuring corporations holding certificates of authority under [R.C. Chapter 1751.]” Or, “if the county or municipal corporation served by the legislative authority provides group health care coverage for its employees, the group health care coverage required by this section shall be provided, if possible, through the policy or plan under which the group health care coverage is provided for the county or municipal corporation employees.” R.C. 1901.111(B). In other words, R.C. 1901.111 requires that the legislative authority procure or provide health care coverage for municipal court judges.⁵

R.C. 1901.111(C) specifies that:

[t]he portion of the costs, premiums, or charges for the group health care coverage procured pursuant to [R.C. 1901.111(B)] that is not paid by the judges of the municipal court, or all of the costs, premiums, or charges for the group health care coverage if the judges will not be paying any such portion, shall be paid as follows:

....

(2) If the municipal court is not a county-operated municipal court, the portion of the costs, premiums, or charges or all of the costs, premiums, or charges shall be paid in three-fifths and two-fifths shares from the city treasury and appropriate county treasuries as described in [R.C. 1901.11(C)].

⁵ Neither a county nor a municipal corporation is required to provide municipal court judges or clerks health care coverage at no cost to the judges or clerks. 2014 Op. Att’y Gen. No. 2014-036 (syllabus, paragraphs 1 and 2).

R.C. 1901.111(C)(2). R.C. 1901.111(C)(2) thus provides for the fractional division of payment for qualifying health care insurance coverage between the City of Napoleon and Henry County treasuries. Inasmuch as health insurance premium payments are a part of the health care coverage procured for the Napoleon Municipal Court judge from insurance companies authorized to engage in the business of insurance in this state under R.C. Title 39 or health insuring corporations holding certificates of authority under R.C. Chapter 1751, R.C. 1901.111(B), the payment of those premiums is subject to the fractional division between the City of Napoleon and Henry County set forth in R.C. 1901.111(C)(2).

Question 4: Health Insurance Premium Payments for Municipal Court Clerks Are Addressed by R.C. 1901.312

For municipal court clerks, health care insurance coverage is not explicitly excluded from the meaning of “compensation” as it is for municipal court judges. The General Assembly nonetheless has provided a separate statute, R.C. 1901.312, setting forth the way in which a municipal court clerk’s health care coverage should be paid. R.C. 1901.312(A) states that, as used in R.C. 1901.312, “health care coverage” has the same meaning as in R.C. 1901.111. R.C. 1901.312(B) sets forth language identical to R.C. 1901.111(B) requiring the legislative authority to procure or provide health care coverage for municipal court clerks. And R.C. 1901.312(C)(2)(a) provides that any of the costs, premiums, or charges, or portions thereof that are not required to be paid by the Napoleon Municipal Court clerk, shall be paid in three-fifths and two-fifths shares from the City of Napoleon and Henry County treasuries.

The above conclusion concerning the Napoleon Municipal Court judge applies equally to the Napoleon Municipal Court clerk. Accordingly, inasmuch as health insurance premium payments are a part of the health care coverage procured for the Napoleon Municipal Court clerk from insurance companies authorized to engage in the business of insurance in this state under R.C. Title 39 or health insuring corporations holding certificates of authority under R.C. Chapter 1751, R.C. 1901.312(B), the payment of those premiums is subject to the fractional division between the City of Napoleon and Henry County set forth in R.C. 1901.312(C)(2)(a).

Question 4: Health Insurance Premium Payments for Municipal Court Bailiffs

No language in R.C. 1901.32 or elsewhere in R.C. Chapter 1901 defines or explicitly enumerates the components of a municipal court bailiff’s compensation. 2013 Op. Att’y Gen. No. 2013-041, at 2-398. When the General Assembly intends to enumerate the components of compensation, it does so explicitly. *See, e.g.*, R.C. 1901.11(E) (as used in R.C. 1901.11, “compensation” of a municipal court judge “does not include any portion of the cost, premium, or charge for sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services, covering a judge of a municipal court and paid on the judge’s behalf by a governmental entity”). If the General Assembly had intended to limit the elements of a municipal court bailiff’s compensation under R.C. 1901.32(A), it could have enacted express language in R.C. 1901.32 comparable to that used in

R.C. 1901.11(E). *See State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

The General Assembly has not limited the meaning of “compensation” as it applies to municipal court bailiffs. Thus, the ordinary meaning of “compensation” applies. In the absence of statutory limitations, “compensation” includes fringe benefits. Health care insurance is a fringe benefit. *See State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (fringe benefits such as the county’s payments of health insurance premiums on behalf of county officers and employees “are as much a part of the compensations of office as a weekly pay check”); 2011 Op. Att’y Gen. No. 2011-026, at 2-221 n.9 (“[f]ringe benefits are a form of compensation”).

The municipal court is not required by statute to provide health care coverage to a municipal court bailiff in any particular way. Accordingly, we only can say that health insurance is a part of compensation, and the Napoleon Municipal Court bailiff’s compensation is required to be paid from the same sources and in the same manner as provided in R.C. 1901.11, which describes the fractional division between the city and the county treasuries. Thus, payment of the Napoleon Municipal Court bailiff’s health care coverage, as a part of the bailiff’s total compensation, is subject to the fractional division between the City of Napoleon and Henry County treasuries.

Process for Administering Municipal Court Payroll and Recovery from Another Political Subdivision of Overpayments

You have also asked us to address the process for making payment to a municipal court judge, clerk, and bailiff when the fractional division of responsibility for compensation is applicable. R.C. 1901.11(C), R.C. 1901.31(C)(3), and R.C. 1901.32(A)(1) provide that the compensation of a municipal court judge, clerk, and bailiff may be paid in either biweekly installments or semimonthly installments, as determined by the payroll administrator. We are not aware of another statute that requires a municipal court payroll administrator to make the payment of compensation to the court’s officers and employees in any specific way. In the absence of direction by the General Assembly regarding processing payroll, a reasonable exercise of discretion may be utilized by a municipal court and its payroll administrator to carry out their payroll responsibilities. *See Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”); *see also* 2007 Op. Att’y Gen. No. 2007-012, at 2-104 n.3 (“[y]ou have asked how payroll should be handled, and whether the librarians will receive one check (and, if so, from the county or law library association) or two checks—one from the county and one from the law library association. These are not legal questions, but rather administrative and auditing questions, and you may wish to contact the Auditor of State’s office for guidance”).

Finally, you have asked whether a statute of limitations applies to one entity's recovery of costs from another if that entity has overpaid its share of the municipal court officers' and employees' compensation and health care coverage. Recovery of overpayments generally is allowable and related accounting errors may be corrected. *See* 2013 Op. Att'y Gen. No. 2013-026, at 2-256 ("it is logical to conclude that the power to expend moneys to compensate employees includes the implied authority to seek recovery of those moneys if they are paid illegally or erroneously"); 1984 Op. Att'y Gen. No. 84-052, at 2-174 (insofar as the statutes expressly provide how the costs of a multi-county juvenile detention and rehabilitation district are apportioned, "the district's accounts must be adjusted to reflect the statutorily mandated apportionment of costs"); *see generally* R.C. 131.39 ("[i]f a state agency determines that all or a portion of a fee, fine, penalty, or other nontax payment made to the agency is not owed, the agency may refund, from the fund to which the payment was credited, the amount that is not owed"). We are not aware of a statute that imposes a time limit upon the recovery of overpayments or the correction of accounting mistakes.

Accounting issues and questions of fact are involved in determining the correct amount of funds that should be reimbursed and for which years a reimbursement may be made. *See* 2016 Op. Att'y Gen. No. 2016-009, slip op. at 13. How far in the past the board of county commissioners or the municipal corporation's legislative authority should search to determine whether a reimbursement is owed may be dictated by the condition and existence of records that enable the county and city to accurately determine the amount of moneys that should be reimbursed. *Id.* These issues are beyond the scope of an Attorney General opinion and will have to be resolved by the county working in concert with the city. *See* 1998 Op. Att'y Gen. No. 98-002, at 2-11 n.6 ("the evaluation of available options cannot be made by means of an Attorney General opinion, but may more appropriately be addressed by persons with knowledge of the facts"). County and city officials also may request the assistance of the Auditor of State and his staff in this endeavor. *Id.* ("[i]t may also be helpful to seek additional assistance from the office of the Auditor of State").

Conclusions

1. The City of Napoleon and Henry County are responsible for their respective portions of employer contributions to the Public Employees Retirement System in relation to the amount of salary they pay to the Napoleon Municipal Court judge, clerk, and bailiff who are Public Employees Retirement System contributors.
2. The City of Napoleon and Henry County are responsible for their respective contributions to the state workers' compensation fund in relation to the amount of salary they pay to the Napoleon Municipal Court judge, clerk, and bailiff.
3. The City of Napoleon and Henry County are responsible for their respective payments of employer-paid Medicare taxes in relation to the

amount of salary they pay to the Napoleon Municipal Court judge, clerk, and bailiff.

4. Inasmuch as health insurance premium payments are a part of the health care coverage procured for the Napoleon Municipal Court judge or clerk from insurance companies authorized to engage in the business of insurance in this state under R.C. Title 39 or health insuring corporations holding certificates of authority under R.C. Chapter 1751, the payment of those premiums is subject to the fractional division between the City of Napoleon and the Henry County treasuries set forth in R.C. 1901.111(C)(2) and R.C. 1901.312(C)(2)(a).
5. Payment of the Napoleon Municipal Court bailiff's health care coverage, as a part of the bailiff's total compensation, is subject to the fractional division between the City of Napoleon and Henry County treasuries set forth in R.C. 1901.11(C).

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General