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MUNICIPAL COURT JUDGES — PROPORTION, COMPENSATION PAID BY CITY AND COUNTY—SECTION 1591 GC—EFFECTIVE JANUARY 1, 1952—APPLICABLE TO ALL MUNICIPAL COURTS—CERTAIN JUDGES ELECTED UNDER PRIOR ANALOGOUS SPECIAL STATUTES INELIGIBLE TO RECEIVE AMOUNT OF COMPENSATION PROVIDED IN SECTION.

SYLLABUS:

The provision in Section 1591, General Code, relative to the *proportion* in which the city and county concerned shall pay the compensation of municipal court judges, became effective on January 1, 1952, as to all municipal courts in existence on that date regardless of the fact that certain of such judges were, on such date, serving in a term to which they had been elected under prior analogous special statutes, and thus were ineligible, during the remainder of such terms, to receive the *amount* of compensation provided in such section.

Columbus, Ohio, April 20, 1953

Hon. Richard P. Faulkner, Prosecuting Attorney  
Champaign County, Urbana, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would like your official opinion concerning the interpretation of Section 1591, General Code of Ohio, covering compensation of municipal judges in regard to when it becomes the obligation of the county to begin paying their two-fifths of the compensation of the municipal judge.

“The above section of the Code became effective June 13, 1951. This effective date was during the present term of the municipal judge of Urbana, Ohio, whose present term does not expire until December 31, 1953.

“The question to be determined is whether or not the county is liable for the two-fifths of his present salary, which is being paid under the provisions of the Act in effect at the time of his election, or whether this obligation to pay the two-fifths of the salary does not begin until the beginning of the municipal judge’s new term on January 1, 1954.”

In my opinion No. 756, Opinions of the Attorney General for 1951, p. 493, I expressed to you the following conclusion:

“The General Assembly, by providing in Amended Senate Bill No. 14 that the existing terms of municipal judges shall not be diminished but shall continue for the period for which they were created, did not intend to and did not abolish the office of the incumbent municipal judge of Urbana and thus the General Assembly intended to and did recognize that the limitations as to change of compensation contained in Section 20, Article II of the Constitution would forbid any increase in compensation of such judge during his existing term, which term does not expire until December 31, 1953.”

In reaching this conclusion I pointed out, p. 497:

“It will be noted that Section 1591, General Code, does not specifically provide that the compensation therein prescribed shall be paid to incumbent judges who, by other provisions of the act, continue in office until the end of their existing terms. Neither does it specifically provide that such judges shall not receive the benefits of any increased compensation provided therein. However, it must be presumed that if the provisions of Section 20, Article II of the Constitution would forbid such increase, the General Assembly acted with full knowledge of this fact and did not intend any increase in compensation to affect the salaries of incumbent municipal judges.”

I proceeded thereafter to consider the effect of pertinent judicial decisions and on the basis of such decisions reached the conclusion that Section 20, Article I, Ohio Constitution, *was* applicable, and that the provisions of Section 1591, General Code, must be interpreted so as to avoid any conflict therewith.

In the matter of the *source* of the funds to be applied toward the pay-

ment of the judges' compensation, as distinguished from the *amount* of such compensation, there is no constitutional difficulty, and hence no necessity for an interpretation which would have the effect of delaying the application of this portion of the statute to the end of the presently existing terms of office of the judges concerned. It remains, therefore, only to ascertain when the provision in Section 1590, General Code, relative to the source of the compensation of judges, became effective.

In Section 3 of Amended Senate Bill No. 14, the municipal court act, 124 Ohio Laws, 589, the act is declared to be an emergency measure. It was signed by the governor and so became effective on June 13, 1951. The emergency clause clearly indicated, however, that it was adopted to permit the election in 1951 of judges of courts to be newly established on January 1, 1952. It can well be supposed, therefore, that the act in its entirety became effective when signed by the Governor only in such limited sense as would permit such election, and that all other provisions were not intended to be effective until January 1, 1952. But whether this be the case or not, it will be observed in Section 2 of the act that provision was made for the repeal, effective January 1, 1952, of the several acts under which the then existing municipal courts had been established. Among such special acts was that relating to the Urbana Municipal Court, which act, in pertinent part, provided in Section 1579-1630, General Code:

“Said municipal judge shall receive such compensation, payable out of the treasury of the city of Urbana not less than nine hundred dollars per annum, payable in monthly installments, as the council of Urbana city may prescribe, and out of the treasury of Champaign county not less than one hundred dollars per annum, payable in monthly installments, as the county commissioners may prescribe.”

This special provision must, of course, be deemed controlling during the period June 13, 1951, to January 1, 1952, despite the conflicting general provisions in Section 1591, General Code, since the later enactment as a whole does not evince any plain intent to the contrary. See 37 Ohio Jurisprudence, 408, section 149.

Accordingly, in specific answer to your inquiry, it is my opinion that the provision in Section 1591, General Code, relative to the *proportion* in which the city and county concerned shall pay the compensation of municipal court judges, became effective on January 1, 1952, as to all municipi-

pal courts in existence on that date regardless of the fact that certain of such judges were, on such date, serving in a term to which they had been elected under prior analogous special statutes, and thus were ineligible during the remainder of such terms, to receive the *amount* of compensation provided in such section.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General