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1. COUNCIL, VILLAGE—MAY NOT INCREASE COMPENSATION OF MAYOR BY WAY OF FEES IN ADDITION TO HIS FIXED SALARY—SECTION 1905.21 RC PROVIDES HE SHALL BE PAID “FIXED ANNUAL SALARY” BUT “SHALL NOT RETAIN OR RECEIVE FOR HIS OWN USE ANY OF THE FINES, FORFEITURES, FEES, OR COSTS HE COLLECTS.”
2. COUNCIL, VILLAGE—MAY GRANT ADDITIONAL COMPENSATION TO MARSHAL, DEPUTY MARSHALS AND POLICE OFFICERS BY WAY OF FEE FOR EACH ARREST MADE—IN ADDITION TO ANNUAL SALARIES.

## SYLLABUS :

1. A village council may not increase the compensation of a mayor by way of fees in addition to his fixed salary, in view of Section 1905.21, Revised Code, which provides that he shall be paid a “fixed annual salary” but “shall not retain or receive for his own use any of the fines, forfeitures, fees, or costs he collects.”

2. A village council in the exercise of its power to fix the compensation of its officers and employees, may grant additional compensation to the marshal, deputy marshals, and police officers of the village by way of a fee for each arrest made, in addition to their annual salaries.

December 9, 1954

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads:

"The question in regard to the Mayor's compensation is this:

"Under the provisions of Section 1905.21, R. C. and Section 731.13, R. C., can the village council fix the mayor's salary, as provided in Section I of the enclosed ordinance, and then, in addition thereto, provide for an additional payment from the village treasury of \$4.70 for each case tried in the mayor's court, regardless of the outcome of the trial, as provided in Section II of the same ordinance?"

"Except that there is no provision of law which limits the amount of their compensation to a 'fixed annual salary' the question arises in connection with the fixing of the compensation of the marshal and the deputy marshal, as follows:

"Under the provisions of Section 731.13 of the Revised Code, can the village council fix an annual salary for the marshal and deputy marshal of the village, as provided in Sections III and V of the enclosed ordinance, and then, in addition thereto, provide for the payment to each of said employees an additional \$4.00 per each case tried in the mayor's court for services as the arresting officer, as provided in Sections IV and VI of the enclosed ordinance?"

"This Ordinance No. 389 of the Village of Brookside was prepared by the Village Solicitor, and appears to be designed to compensate the mayor, the marshal and the deputy marshal in amounts in lieu of their costs, which must be deposited in the village treasury, effective January 1, 1954, under the provisions of Section 1905.21, Revised Code."

The salary ordinance submitted with your request, provides in part:

"\* \* \* beginning January 1, 1954, the mayor of the village shall be compensated for his services in the sum of \$400 per year \* \* \* and shall be further compensated in the sum of \$4.70 for his services in the trial of each case involving the violation of a village ordinance or statute of the state of Ohio, said additional compensation to be paid to mayor from the village treasury regardless of

the outcome of such trial or the collection of costs therein and his right to such additional compensation to be in no wise dependent on the outcome of such trial or the collection of costs therein.”

Similar provisions for fees in addition to fixed salary are made for the marshal, deputy marshal, and arresting officers.

Section 731.13, Revised Code, provides :

“The legislative authority of a village shall fix the compensation and bonds of all officers, clerks, and employees of the village *except as otherwise provided by law*. The legislative authority shall, in the case of officers, fix their compensation for the ensuing term of office at a meeting held not later than five days prior to the last day fixed by law for filing as a candidate for such office. \* \* \* *The compensation so fixed* shall not be increased or diminished during the term for which any officer, clerk, or employee is elected or appointed. \* \* \*” (Emphasis added.)

Section 1905.21, Revised Code, as enacted in 1953, provides :

“The mayor of a municipal corporation \* \* \*. After January 1, 1954, \* \* \* shall not retain or receive for his own use any of the fines, forfeitures, fees or costs he collects, but *shall be paid such fixed annual salary* as the legislative authority of the municipal corporation provides under sections 731.08 and 731.13 of the Revised Code. Notwithstanding the provisions of section 731.13 of the Revised Code, the legislative authority of any village not embraced within the jurisdiction of a municipal court, may at any time prior to October 31, 1953, fix the compensation of the mayor for the term beginning January 1, 1954. He shall account for and dispose of all such fees, forfeitures, fines, and costs as provided in section 733.40 of the Revised Code. \* \* \*” (Emphasis added.)

With respect to the provisions of this quoted section, it is clear that it constitutes a limitation on the general power of a village to fix the compensation of its officers, as granted by Section 731.13, *supra*. It is, I believe, equally clear that Section 1905.21, *supra*, prescribes the method of compensation which the village ordinance purports to effect.

I am aware that the term “fixed” may be susceptible of at least two meanings when employed in an adjective sense. It may connote inflexibility in the sense of constant and unvarying; or it may be synonymous with “determined.” In this latter sense when used in conjunction with

the term compensation, it has been held that where the basis is "fixed" or determined the actual amount received may vary. *State ex rel. Mack v. Guckenberger*, 139 Ohio St., 273.

However, when, as here, it modifies the words "annual salary" a contrary conclusion is dictated. Thus, in *Gobrecht v. Cincinnati*, 51 Ohio St., 68, 72, the term "salary" was stated to be an annual or periodic payment for services, " \* \* \* a payment dependent on the time and not on the amount of the service rendered." In the instant situation Section 1905.21, *supra*, not only provides for a salary in this sense, but also prescribes the period upon which it is to be based, that is, a yearly one. The ordinance, here involved, clearly attempts to compensate the mayor on a piece work basis, a direct antithesis to what is ordinarily connoted by the term "fixed annual salary."

With respect to the office of village marshal, deputy marshal and police officers, there would appear to be no prohibition against fixing their compensation on the basis of arrests actually made. It may be noted in this connection that the fact that the ordinance establishing such a basis of compensation is or becomes effective during the tenure of such officers, does not come within the provisions of Section 731.13, *supra*, prohibiting an increase or decrease in compensation during term. See Opinion No. 5818, Opinions of the Attorney General for 1943, page 82.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. A village council may not increase the compensation of a mayor by way of fees in addition to his fixed salary, in view of Section 1905.21, Revised Code, which provides that he shall be paid a "fixed annual salary" but "shall not retain or receive for his own use any of the fines, forfeitures, fees, or costs he collects."

2. A village council in the exercise of its power to fix the compensation of its officers and employees, may grant additional compensation to the marshal, deputy marshals, and police officers of the village by way of a fee for each arrest made, in addition to their annual salaries.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General