

OPINION NO. 92-007**Syllabus:**

The increase in compensation payable to township clerks under R.C. 507.09, as amended in 1987-1988 Ohio Laws, Part I, 1639 (Am. S.B. 452, eff. Dec. 15, 1988), does not become effective until April 1, 1992.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, March 20, 1992

You have submitted an opinion request asking, "whether the compensation increase provided for township clerks in Amended Senate Bill No. 452 is effective as of January 1, 1992, or April 1, 1992."

Constitutional Prohibitions on In-Term Salary Increases

Article II, section 20 of the Ohio Constitution states:

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.

This provision of the Constitution, thus, prohibits changing the salary of officers during their terms "when such changes are the result of direct legislative action on the section(s) of the Revised Code which are the basis of the officers' salaries." *Schultz v. Garrett*, 6 Ohio St. 3d 132, 135, 451 N.E.2d 794, 798 (1983). Although the applicability of art. II, §20 is most often discussed in the context of salary increases, art. II, §20 prohibits any change, whether an increase or decrease, in an officer's salary during his term. 1989 Op. Att'y Gen. No. 89-087.

The court in *State ex rel. Artmayer v. Board of Trustees*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975), concluded that the prohibition against in-term changes in salary prescribed by art. II, §20 applies to the office of township clerk. It is, therefore, necessary to examine 1987-1988 Ohio Laws, Part I, 1639 (Am. S.B. 452, eff. Dec. 15, 1988), amending, *inter alia*, R.C. 507.09 (which establishes a compensation schedule for township clerks), to determine whether the amendment provides for an "in-term" change in the compensation of township clerks.

Prior to its amendment by Am. S.B. 452, former R.C. 507.09 provided that township clerks were entitled to receive a fixed salary (subject to statutory maximums) based upon the size of the township's budget, plus fees for the performance of certain duties. 1983-1984 Ohio Laws, Part I, 1530 (Am. Sub. H.B. 37, eff. June 22, 1984). The salary portion of the township clerk's remuneration was generally expressed as a percentage of total township expenditures, subject to the fixed statutory maximums established in accordance with a schedule based on the budget of the applicable township.

Pursuant to R.C. 507.09(A), as amended in Am. S.B. 452, a township clerk is now entitled to receive a fixed amount of compensation in accordance with a schedule based on the budget of the township in which he serves. The fee portion of the township clerk's remuneration has been eliminated.

A comparison of the two versions of R.C. 507.09, as described above, demonstrates that in each case the amount of the fixed compensation to which a township clerk was entitled under former R.C. 507.09 was limited to a maximum figure which is less than the amount now established by R.C. 507.09 for a clerk of a township with the same size budget. The amendment of R.C. 507.09 in Am. S.B. 452, therefore, operates as a direct legislative change in the statute fixing the compensation of township clerks, resulting in an increase in the amount of compensation of township clerks.

It is, therefore, necessary to determine whether Am. S.B. 452 provides for such increase to occur "in-term." As noted in your letter, the township clerks who were elected in 1987 commenced their terms of office on April 1, 1988, to hold office for four years until March 31, 1992.¹ The amendments effected by Am. S.B. 452 were enacted on December 15, 1988, during the present term. Therefore, in accordance with Ohio Const. art. II, §20, those township clerks whose terms commenced on April 1, 1988, are ineligible to receive an increase in compensation until after March 31, 1992, the end of their present term.

Uncodified section five of Am. S.B. 452, however, states: "The changes in salary made by this act in divisions (A) and (C) of [R.C. 507.09] shall be applied to township clerks elected in 1991 beginning on January 1, 1992." Pursuant to R.C. 507.01, the most recent election for township clerks occurred in 1991, for a four-year term to begin on April 1, 1992. Because Am. S.B. 452 was enacted on December 15, 1988, before the beginning of the term of those township clerks who were elected to terms beginning on April 1, 1992, those township clerks will be entitled to receive the increased compensation specified in R.C. 507.09, as amended in Am. S.B. 452, when they begin their terms on April 1, 1992.

The only township clerks elected in 1991 who would be in office on January 1, 1992, are those clerks who are already serving out a prior term. Any township clerk who is currently serving out a term for which he was elected in 1987 and which commenced on April 1, 1988, however, continues to serve in that same term until March 31, 1992, and is, thus, prohibited by Ohio Const. art. II, §20 from receiving an increase in compensation prior to March 31, 1992.²

Based on the foregoing, it is my opinion, and you are hereby advised that, the increase in compensation payable to township clerks under R.C. 507.09, as amended in 1987-1988 Ohio Laws, Part I, 1639 (Am. S.B. 452, eff. Dec. 15, 1988), does not become effective until April 1, 1992.

¹ See R.C. 507.01 ("[a] township clerk shall be elected at the general election in 1951, and quadrennially thereafter in each township, and he shall hold his office for a term of four years commencing on the first day of April next after his election").

² There may be a category of persons who were elected in 1991 to begin service as township clerks on April 1, 1992, and who are currently serving as township clerks, having been appointed or elected, as provided in R.C. 503.24 to fill a vacancy in that office. It is well settled that, "an officer [to whom Ohio Const. art. II, §20 applies and] who is appointed or elected to fill a vacancy for an unexpired term is entitled to receive an increase in compensation which was enacted before his appointment or election, but after the commencement of the term to which he succeeds." 1983 Op. Att'y Gen. No. 83-015 at 2-61. In this instance, however, it is clear that the General Assembly's intent in enacting uncodified section five of Am. S.B. 452 was to provide a pay increase to township clerks elected in 1991 at the commencement of their terms, which occurs April 1, 1992, rather than January 1, 1992. Thus, a person who was elected to the office of township clerk at the 1991 election, but is currently serving as township clerk by virtue of appointment or election to that office after December 15, 1988, the date of the enactment of Am. S.B. 452, is not entitled to receive the increase in compensation provided by R.C. 507.09, pursuant to uncodified section five of Am. S.B. 452, prior to the beginning of his new term on April 1, 1992.