

2325

SALARY—INDIVIDUAL APPOINTED OR ELECTED TO UN-EXPIRED TERM OF JUDGE OF COMMON PLEAS COURT—MEIGS COUNTY—STATUTORY TERM BEGINNING JANUARY 1, 1947, ENDING DECEMBER 31, 1952—\$4,000.00 PER YEAR—PAYABLE UNDER SECTION 2251 G. C. PLUS ADDITIONAL COMPENSATION UNDER SECTION 2252 G. C.

## SYLLABUS:

The salary of the individual who is hereafter appointed or elected to the unexpired term of judge of the Common Pleas Court of Meigs County for the statutory term beginning January 1, 1947, and ending December 31, 1952, will be \$4,000 per year payable under the provisions of Section 2251, General Code, plus additional compensation provided for by Section 2252, General Code.

Columbus, Ohio, September 27, 1950

Hon. Frank J. Lausche, Governor of Ohio  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Through the death of Judge Ervin a vacancy now exists on the Common Pleas Bench of Meigs County.

“Before I tender the appointment I would like to know what the salary of the Judge will be who is selected to fill the vacancy.

It is my understanding that General Code Section 2251 determines what the salary of the new appointee will be.

“There is some question whether the raise granted by the last legislature is or is not applicable to the person who is selected to fill the unexpired term.

“Please let me have your opinion in respect to the legal question involved.”

I am informed that the late Judge Ervin was elected in November, 1946, for a term beginning January 1, 1947, and expiring December 31, 1952.

At the time this statutory term began, Section 2251, General Code, read in part as follows:

“The annual salaries of the chief justice of the supreme court and of the judges herein named payable from the state treasury shall be as follows:

“\* \* \* Judges of the common pleas courts, each, three thousand dollars.”

Subsequent to the beginning of this term of office, Section 2251, General Code, was amended to include the following language:

“\* \* \* provided, however, that from and after the expiration of the term of office of any judge of the common pleas court holding office on the effective date of this act, such annual salary shall be four thousand dollars.”

From the foregoing, it is apparent that the question to be determined is whether the expression, “term of office,” refers to the statutory term for which the late Judge Ervin was elected or merely to the period of time during which he was an incumbent in such office.

It is apparent that the Legislature in including this proviso in Section 2251, General Code, along with an increase in salary, was mindful of Section 14, Article IV of the Ohio Constitution which reads in part as follows:

“The Judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this State, or the United States. \* \* \*”

A similar constitutional provision is found in Section 20 of Article II of the Constitution which applies to officers other than judges. In State,

ex rel. *Glander v. Ferguson*, 148 O. S. 581, the application of this constitutional provision was considered in the case of a statute affecting a salary increase for non-judicial officers of the state. The first paragraph of the syllabus in that case reads as follows:

“The words ‘during his existing term,’ as used in Section 20 of Article II of the Constitution of Ohio, which inhibits a change of ‘salary of any officer during his existing term,’ apply strictly to the term to which the officer is appointed or elected and not to the period constituting the statutory term of the office.”

In comparing the salary change inhibition of Section 20 of Article II with that found in Section 14 of Article IV of the Ohio Constitution, the court, speaking through Judge Matthias, said (pp. 589-590):

“Section 20 of Article II and Section 14 of Article IV of the state Constitution are similarly phrased. The latter provision, which applies to members of the judiciary, has heretofore been construed by this court.

“In the case of *Zangerle, County Aud., v. State, ex rel. Stanton, Pros. Atty.*, 105 Ohio St., 650, it was held that a judge who served a term of office which began subsequent to the enactment of a statute increasing the salary of such office was entitled to the increase of salary therein provided, although his election was for the remainder of an unexpired statutory term during which a statute providing an increase in the salary had been enacted. The record discloses that the judge involved in that case had been elected for two years of an unexpired term. The term of office of the predecessor of such judge had commenced prior to the effective date of the statute providing an increase of salary but the election for the unexpired term occurred subsequent thereto. Therefore, clearly, the question presented, and necessarily decided, was whether the phrase, ‘his existing term,’ had reference to the period which constituted the statutory term of office or the period which the judge was elected to serve.

“This court held in that case that the service and term of office of the judge, elected for the two-year unexpired term, having begun subsequent to the passage of the statute providing for the increase of salary, that he was entitled to such increase, and, therefore, that the phrase, ‘his existing term,’ means the term being served by the officer and not the period constituting the statutory term. The policy indicated has been long continued in this state as disclosed by the opinions of various attorneys general.”

It is obvious from this language that the expression “during their term of office” as used in Section 14 of Article IV of the Ohio Constitution

refers to the tenure of particular individuals within a statutory term, and not to the statutory term itself.

It must be presumed, I think, that the Legislature in adding the proviso quoted above in Section 2251, General Code, was familiar with the judicial construction of Section 14, Article IV of the Ohio Constitution. From this it can be presumed that the Legislature, in enacting such proviso, intended only to recognize and give effect to this constitutional provision as judicially interpreted. Although a somewhat different choice of language was made by the Legislature in this amendment, there is nothing whatever to indicate any intention to make the inhibition against salary changes of judicial officers any more stringent than that which was provided in the Constitution.

Moreover, such a motion is wholly reasonable and logical. It should be observed that judicial officers are of a class separate and distinct from public officers generally. The nature of their duties requires them to be wholly impartial in every matter coming before them for decision, and numerous safeguards designed to preserve their impartiality and freedom from political strife have been written into the Constitution and the statutes as well. One of such safeguards is the inhibition against the salary change as found in Section 14, Article IV of the Ohio Constitution. We may readily surmise that this inhibition was designed to prevent a situation where, on the one hand, the Legislature might be tempted to influence the actions of judicial officers by a threatened reduction of their salaries or, on the other hand, where judicial officers would have any incentive for promoting legislation designed to increase their own salaries. It is obvious that such inhibition, to the extent that it is construed so as to be applicable to a newly appointed or elected judicial officer following the passage of any such legislation, would be wholly unnecessary and ineffective in promoting this object.

Accordingly, it is my opinion that the language of the final proviso in Section 2251, General Code, refers to the tenure of an individual judicial officer within a statutory term of office and not to the statutory term itself; and that the individual hereafter appointed or elected to serve out the balance of the statutory term to which the late Judge Ervin was elected would be entitled to an annual salary of \$4,000 under the provisions of Section 2251, General Code.

Your attention is invited also to Section 2252, General Code, which provides for additional compensation to common pleas judges payable from

the treasury of the county. The amount of this compensation is based on the population of the county as determined by the most recent federal census. It is to be noted that although Section 2252, General Code, was amended at the same time as Section 2251, General Code, both becoming effective September 20, 1947, the statute is unchanged in so far as it affects a common pleas judge in a county having a population of 50,000 or less.

Under the rule expressed in Opinion No. 3982, Opinions of the Attorney General for 1941, page 551, approved and followed in my Opinion No. 2243, dated September 1, 1950, the increase in compensation provided by Section 2252, General Code, as effected by a population increase as a result of the April 1, 1950 census, would be effective on April 1, 1950. The syllabus of this latter opinion reads as follows:

“Additional compensation provided for judges of the courts of common pleas by Section 2252, General Code, should be computed for each year of their term which begins after April 1, 1950, on the basis of the 1950 federal census. (1941 Opinions of the Attorney General, No. 3982, page 551, approved and followed.)

Accordingly, and in specific answer to your inquiry, it is my opinion that the salary of the individual who is hereafter appointed or elected to the unexpired term of judge of the Common Pleas Court of Meigs County for the statutory term beginning January 1, 1947 and ending December 31, 1952, will be \$4,000 per year payable under the provisions of Section 2251, General Code, plus additional compensation provided for by Section 2252, General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.