

**OPINION NO. 83-015****Syllabus:**

A township trustee who is appointed to fill a vacancy for an unexpired term is entitled to receive an increase in compensation which became effective prior to his appointment, but subsequent to the commencement of the term to which he succeeds.

**To: Frederick D. Pepple, Auglaize County Prosecuting Attorney, Wapakoneta, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 25, 1983**

I have before me your request for my opinion concerning the compensation of a township trustee. In your letter, you state that, until recently, a particular township trustee was serving in office and drawing compensation pursuant to R.C. 505.24,<sup>1</sup> as that compensation was set by 1975-1976 Ohio Laws, vol. I, 623 (Am. S.B. 237, eff. Jan. 11, 1977). During this trustee's term, R.C. 505.24 was amended by Sub. H.B. 188, 114th Gen. A. (1981) (eff. Nov. 5, 1981), which increased the compensation of township trustees. Due to the prohibition found in Ohio Const., art. II, §20 against public officers receiving in-term increases in compensation,<sup>2</sup>

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<sup>1</sup> R.C. 505.24 sets forth the amount of compensation to which township trustees are entitled, and the methods by which such compensation may be paid. The amount which a trustee receives depends on the amount of the township budget. For example, division (B)(1) provides that in townships having a budget of fifty thousand dollars or less, each trustee is entitled to sixteen dollars per day for each day of service in the business of the township, for not more than two hundred days. Trustees may be paid on a per diem basis or, by unanimous vote of the trustees, on an annual salary basis. If paid an annual salary, a trustee is entitled to "the maximum amount that could be received annually by a trustee if he were paid on a per diem basis. . . ."

<sup>2</sup> Ohio Const. art. II, §20 reads: "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."

the trustee in question did not receive the amount of the increase passed in 1981, but continued to receive the amount set in 1977.<sup>3</sup> Subsequent to November 5, 1981, the trustee resigned, and a person was appointed pursuant to R.C. 503.24 to fill the vacancy.<sup>4</sup> Your question is whether this appointee is entitled to the rate of compensation which became effective November 5, 1981, or whether the appointee is limited by art. II, §20 to the amount to which his predecessor was entitled, since he is serving for the duration of the former trustee's unexpired term, which commenced prior to the increase in compensation.

Your question may be answered by an examination of State ex rel. Glander v. Ferguson, 148 Ohio St. 581, 76 N.E.2d 373 (1947), and subsequent opinions interpreting this case. In Glander, the situation involved a public officer who held over in office after the expiration of his statutory term, see R.C. 3.01, during which holdover period a salary increase was enacted. The officer was then appointed to serve for the remainder of the unexpired term, and the question arose whether he was entitled to receive the increase in compensation while serving for the unexpired term. In determining that the officer could receive such increase, the court stated in the case's syllabus:

1. 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.

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<sup>3</sup> Art. II, §20 has specifically been held applicable to township trustees. 1978 Op. Att'y Gen. No. 77-054; 1977 Op. Att'y Gen. No. 77-083. I note that art. II, §20 prohibits in-term increases in per diem payments as well as in annual salaries. Op. No. 77-083. See 1979 Op. Att'y Gen. No. 79-102; 1978 Op. Att'y Gen. No. 78-018. However, if the township budget increases, trustees are entitled to any increase in compensation specified in R.C. 505.24, even if the increase is in-term, as long as the increase is based on a formula established prior to the time the trustee commenced serving in office. 1979 Op. Att'y Gen. No. 79-006; Op. No. 77-083. See State ex rel. Mack v. Guckenberger, 139 Ohio St. 273, 39 N.E.2d 840 (1942); 1975 Op. Att'y Gen. No. 75-054.

<sup>4</sup> R.C. 503.24 reads:

If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term or until a successor is elected.

. . . .

If a vacancy occurs in a township elective office more than forty days before the next general election for municipal and township officers a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election. If the term expires within one year from the day of the next general election for municipal and township officers, a successor appointed pursuant to this section shall serve out the unexpired term.

Although the possibility exists that the appointee was appointed to serve only until a successor was elected, rather than for the unexpired term, it is unnecessary to make such a distinction for purposes of my analysis and conclusion. See 1969 Op. Att'y Gen. No. 69-149. For ease of discussion, I will assume the trustee was appointed to fill the unexpired term. I note, also, that my conclusion is applicable to persons elected, as well as appointed, to fill a vacancy. See Op. No. 69-149; 1952 Op. Att'y Gen. No. 1133, p. 117.

2. The inhibition against change of salary of a public officer in Section 20, Article II of the Constitution of Ohio, does not apply to a person appointed to a partially expired statutory term, where the salary of the office is increased by statute effective during the preceding portion of such term and during the time such person was holding over in the office under his appointment thereto for the preceding statutory term.

Although Glander involved an officer who was holding over his statutory term, during which time an increase was passed, and who was then appointed to succeed himself for the unexpired term, a number of opinions have applied Glander, or the reasoning therein, to situations analogous to that presented by your letter, and have uniformly concluded that an officer 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. See, e.g., 1978 Op. Att'y Gen. No. 78-023; 1969 Op. Att'y Gen. No. 69-149; 1960 Op. Att'y Gen. No. 1644, p. 566; 1952 Op. Att'y Gen. No. 1133, p. L7; 1951 Op. Att'y Gen. No. 857, p. 642; 1950 Op. Att'y Gen. No. 2325, p. 641 (interpreting Ohio Const. art. IV, §4, prohibiting in-term changes in the compensation of judges of the Supreme Court and courts of common pleas, which has since been repealed); 1949 Op. Att'y Gen. No. 1101, p. 747. See also City of Parma Heights v. Schroeder, 93 Ohio L. Abs. 247, 196 N.E.2d 813 (C.P. Cuyahoga County 1963) (interpreting a municipal charter provision prohibiting an in-term change in the municipal officers' salaries); 1978 Op. Att'y Gen. No. 78-054. Indeed, it appears that even before the decision in Glander was rendered, the principle was established that an appointee was entitled to the rate of compensation in effect at the time of his appointment, rather than at the time that his predecessor, whose term he was completing, was appointed or elected. See, e.g., State ex rel. Pugh v. Tanner, 29 Ohio C. Dec. 255, 27 Ohio Ct. App. 385 (App. Muskingum County 1917) (interpreting what is now R.C. 731.07, prohibiting in-term changes in compensation of city officers, clerks, and employees); 1943 Op. Att'y Gen. No. 5791, p. 35; 1938 Op. Att'y Gen. No. 2150, vol. I, p. 628.

As one of my predecessors aptly stated:

It is clear that Ohio has taken the position that one who fills a vacancy is entitled to an increase in salary authorized after the beginning of the original term to which he succeeds but before his appointment to fill the vacancy, because the restriction on an increase in salary during term is personal to the incumbent of the office, and does not apply to his successor, except when the statute granting the increase specifically applies to a term of office as distinguished from the incumbent of the office. The same must also be true in regard to one who is elected to fill an unexpired term under these circumstances.

Op. No. 69-149 at 2-324.

The problems which prohibitions against in-term changes in compensation are meant to avoid are that of the legislature influencing officers by threatening salary reductions and that of officers promoting legislation designed to increase their own salaries. State ex rel. Mack v. Guckenberger, 139 Ohio St. 273, 39 N.E.2d 840 (1942); 1983 Op. Att'y Gen. No. 83-004; 1950 Op. No. 2325. These problems are not seen to exist with regard to officers who are appointed or elected after the passage of a change in compensation; thus, the prohibition is not applicable to such officers. 1950 Op. No. 2325.

In conclusion, it is my opinion, and you are advised, that a township trustee who is appointed to fill a vacancy for an unexpired term is entitled to receive an increase in compensation which became effective prior to his appointment, but subsequent to the commencement of the term to which he succeeds.