

OPINION NO. 83-026**Syllabus:**

R.C. 1901.34 provides for a city law director to receive compensation from the board of county commissioners in addition to the compensation established by the city.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 25, 1983

I have before me your request for an opinion on the question whether R.C. 1901.34 provides for a city law director to receive compensation from the county board of commissioners in addition to his compensation as established by the city.

R.C. 1901.34 defines the respective duties of the chief legal officers of municipal corporations (generally village solicitors and city directors of law) and county prosecutors to prosecute criminal cases in the municipal courts. It provides that the prosecuting attorney "given the duty of prosecuting violations of state law shall receive no additional compensation for assuming these additional duties," with certain exceptions. With respect to compensation of the city law director or other chief legal officer of a municipality, R.C. 1901.34(A) states: "He [the city director of law] or his assistants whom he may appoint shall receive for such services additional compensation to be paid from the treasury of the county as the board of county commissioners prescribes."

R.C. 1901.34 specifies that compensation to the city law director (or his assistants whom he may appoint) is to be "additional." The implication is that it is to be in addition to compensation received from other sources—in particular, in addition to the compensation which the law director receives from the city, pursuant to R.C. 731.08¹ or otherwise. See Hickman v. Portsmouth, 24 Ohio Op. 2d

¹ R.C. 731.08 states, in relevant part:

Except as otherwise provided in Title VII of the Revised Code, the legislative authority of a city, by ordinance or resolution, shall determine the number of officers, clerks, and employees in each department of the city government, and shall fix, by ordinance or resolution, their respective salaries and compensation. . . .

R.C. 733.49 provides for election of a city director of law.

170, 187 N.E.2d 653 (C.P. Scioto County 1962) (relevant provisions of city charter control over R.C. 731.08). The language of R.C. 1901.34 thus contemplates that a city law director may receive compensation for legal services both from the board of county commissioners and from the city. See 1952 Op. Att'y Gen. No. 2183, p. 785 (syllabus, paragraph 2) ("The 'additional compensation' for which provision is made in [G.C. 1613, predecessor to R.C. 1901.34] is for services rendered by the several officers therein designated in the prosecution of criminal offenses under state statutes; and the county commissioners are authorized to prescribe such compensation with respect to the prosecuting officers of any of the municipalities within the court's territory").

This interpretation of R.C. 1901.34 finds support in the analogous language of R.C. 733.52, which states:

The city director of law as prosecuting attorney of the mayor's court shall prosecute all cases brought before the court, and perform the same duties, as far as they are applicable thereto, as required of the prosecuting attorney of the county.

The director of law or the assistants whom he designates to act as prosecuting attorneys of the mayor's court shall receive such compensation for the service provided by this section as the legislative authority of the city prescribes, and such additional compensation as the board of county commissioners allows.

G.C. 4307, predecessor to R.C. 733.52, authorized the county to provide additional compensation when the city law director (then city solicitor) prosecuted cases in the police or mayor's court. The Ohio Supreme Court, in Commissioners of Butler County v. State ex rel. Primmer, 93 Ohio St. 42, 112 N.E. 145 (1915), found this provision applicable also to municipal courts and stated that "the evident purpose [is] that the city shall compensate [the city solicitor] for the prosecution of city cases, upon allowance of council, and the county, as a subdivision of the state, shall compensate him for services rendered in state cases, upon the allowance of the county commissioners." *Id.* at 43-44, 112 N.E. at 146. See also State ex rel. Browning v. Commissioners of Fayette County, 14 Ohio L. Abs. 529 (Ct. App. Fayette County 1933); 1932 Op. Att'y Gen. No. 4869, vol. III, p. 1479. It has, thus, been long established in Ohio that the chief legal officer of a municipality, who prosecutes cases on behalf of both the city and the state, may receive compensation from both the city and the county. See generally Thomas v. Commissioners of Hamilton County, 88 Ohio St. 489, 104 N.E. 536 (1913).

As I understand the situation which motivated your request, the county has prescribed certain compensation to be paid to a particular city director of law. R.C. 1901.34 clearly authorizes such payment to be made in addition to whatever compensation the city provides.

It is, therefore, my opinion, and you are hereby advised, that R.C. 1901.34 provides for a city law director to receive compensation from the board of county commissioners in addition to the compensation established by the city.