

OPINION NO. 72-009**Syllabus:**

Amended Senate Bill No. 147 does not violate either Section 28 or Section 29 of Article II of the Ohio Constitution, nor any other law of this State.

To: Paul A. Corey, Director, Dept. of State Personnel, Columbus, Ohio
By: William J. Brown, Attorney General, January 27, 1972

Your request for my opinion states as follows:

"On January 20, 1972, the Honorable John J. Gilligan signed into law Amended Senate Bill 147, which had previously been passed by more than two-thirds of the members of each branch of the General Assembly. The provisions of the Act include an across-the-board pay increase for all employees of the State; an upward reassignment of the pay ranges of 268 job classifications and the establishment of a death benefit life insurance program. The Act further provides it shall take effect at the beginning of the pay period which includes January 1, 1972. However, the State will be unable to provide the benefits of this Act to our employees until certain procedural steps have been taken as required by the Cost of Living Council and the Pay Board.

"Therefore, assuming that these federal bodies do not object to Ohio's implementation of the provisions of the Act, will the State of Ohio be in violation of the laws of the State if it compensates its employees under the terms of the Act for work performed beginning with the pay period which includes January 1, 1972?"

The only questionable position of the Bill is that portion which grants the added compensation for the period of January 1, 1972 to January 20, 1972, the effective date of the Bill being January 20, 1972. Article II, Section 29, Ohio Constitution, states:

"No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly."

This Section has been interpreted to mean that if two-thirds of each house of the General Assembly pass a bill paying extra compensation to an officer, public agent, or contractor, such bill does not violate the Ohio Constitution. State ex rel. Gindelsperger v. Wright, 24 Ohio C.C.R. (n.s.) 400 (1915). The Court in that case stated:

"It is manifest that Section 29 provides for a definitely defined case not controlled by Sections 26 and 28. It provides for extra compensation to an officer, to a public agent, to a contractor. In each instance it is manifest that the Constitution was intended to confer upon the Legislature power to grant extra compensation to the individual for services rendered or contracts entered into.* * *"

Thus Amended Senate Bill No. 147 is excepted from the prohibition of Article II, Section 28, Ohio Constitution, as to retroactive legislation, by Section 29, supra.

If Section 29, supra, had not been so interpreted this Bill would still not violate Section 28, supra. Section 28, supra, states:

"The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state."

A retroactive statute has been defined by Justice Story, as quoted in Rairden v. Holden, 15 Ohio St. 207, 210 (1864):

"Upon principle, every statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, im-

poses a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

It has also been defined by the Ohio Supreme Court as, "A statute which imposes a new or additional burden, duty, obligation or liability as to past transactions." Miller v. Hixson, 64 Ohio St. 39 (1901). A more recent Court of Appeals case stated, "Where private rights are not infringed, the Legislature of the state of Ohio may pass retrospective laws waiving or impairing its own rights." State ex rel. Department of Mental Hygiene v. Eichenberg, 2 Ohio App. 2d 274 (1965). In that opinion the Court of Appeals cited an Ohio Supreme Court case which said, "* * * the constitutional inhibition [Article II, Section 28, supra] does not apply to legislation recognizing or affirming the binding obligation of the state, or any of its subordinate agencies, with regard to past transactions. It is designed to prevent retrospective legislation injuriously affecting individuals, and thus protect vested rights from invasion." Kumler v. Silsbee, 38 Ohio St. 445, 447 (1882), quoting New Orleans v. Clark, 95 U.S. 644, 655 (1877). As such, the portion of Amended Senate Bill No. 147, supra, in question is not retroactive within the meaning of Article II, Section 28, supra.

It is, therefore, my opinion, and you are so advised, that Amended Senate Bill No. 147 does not violate either Section 28 or Section 29 of Article II of the Ohio Constitution, nor any other law of this state.