

OPINION NO. 72-121

Syllabus:

Pursuant to R.C. 143.091 a county welfare director is assigned to the proper pay range specified in R.C. 143.10, and a county is prohibited from making supplemental payments to a welfare director from the county general fund.

To: Joseph R. Grunda, Lorain County Pros. Atty., Elyria, Ohio
By: William J. Brown, Attorney General, December 26, 1972

I have before me your request for my opinion, which asks the following question:

Does Ohio Revised Code Section 143.091 prohibit a county from making payments to Welfare Directors from the county General Fund?

The answer is in the affirmative, and it appears there are at least two reasons why this is correct. First, there is the argument that a person, by accepting a public office, is bound to perform the duties of the office for the specified salary. He cannot legally claim additional compensation for the discharge of his prescribed duties, even though the salary may be a very inadequate remuneration for the services; nor is it material that by subsequent statutes or ordinances his duties are increased, and not his salary. His undertaking is to perform the duties of his office, whatever they may be, from time to time during his continuance in office, for the compensation stipulated, whether these duties are diminished or increased; and whenever he considers the compensation inadequate, he can resign. See Opinion No. 1814, Opinions of the Attorney General for 1930. Compare State ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253 (1968), and Stage v. Coughlin, 12 Ohio N.P. (n.s.) 419 (1912).

Supplemental payments to public employees are contrary to the spirit of civil service. See Borden v. State Personnel Board, 37 Cal. 2d 634, 641, 234 P. 2d 981, 985 (1951), in which the court said:

The terms and conditions of civil service employment are fixed by statute and not by contract. When an employee of the state, under civil service, accepts a position, he does so with the knowledge of the fact that his salary and, indeed, his conduct, are both subject to the law governing such matters, as set forth in the statute and the Rules and Regulations of the Commission. The statutory provisions controlling the terms and conditions of civil service employment cannot be circumvented by purported contracts in conflict therewith.

See also R.C. 141.12 and 141.13; 9 O. Jur. 2d, Civil Service, Section 22.

The second argument is that R.C. 143.091, which prescribes the pay scale of a welfare director, not only fails to authorize Lorain County to make supplemental payments to its county welfare

director from the general fund, but it also specifically assigns him to the pay range prescribed in R.C. 143.10. R.C. 143.091 states:

(A) All positions, offices, and employments in each county department of welfare, except positions used exclusively in the retarded children's program or in an institution operated by a county welfare department, are hereby assigned to the pay ranges established in section 143.10 of the Revised Code if the classification is enumerated in section 143.09 of the Revised Code. In accordance with procedures in section 143.101 of the Revised Code, the state employee compensation board may assign higher or lower pay ranges for such classes established by a county department of welfare, except that such authority does not apply to the foregoing excepted positions. Boards of county commissioners may use the classifications contained in this chapter for positions used exclusively in the retarded children's program or in institutions operated by county welfare departments. Classifications of employees not enumerated in section 143.09 of the Revised Code are assigned to the pay ranges established in section 143.10 of the Revised Code, as follows:

* * * * *

This section provides that a welfare director must be assigned to the pay scale provided in R.C. 143.10, which was done, in part, in the instant case. It does not authorize supplementary payments of the kind made here.

You inquire as to the authority of Lorain County to supplement the welfare director's salary. I can find no authority for a supplement of his salary for the reason that R.C. 143.10 was intended to fix and standardize such salaries. These Sections of R.C. Chapter 143 are mandatory not only as to salary, but as to whether such an employee should be paid biweekly or semi-monthly. They also have been held to require the standard workweek of forty hours rather than a pre-existing workweek of forty hours rather than a pre-existing workweek of thirty-seven and one-half hours. See Opinion No. 67-094, Opinions of the Attorney General for 1967. Compare State ex rel. Lynch v. Cleveland, 164 Ohio St. 437 (1956) and State ex rel. Petit v. Wagner, 170 Ohio St. 297 (1960). Prior to July 25, 1967, when R.C. 143.091 became effective some counties did supplement the pay of their welfare directors. Since then, under R.C. 143.091 (F), it is mandatory that he be paid in accordance with the rates set forth in R.C. 143.10. R.C. 143.091 makes it clear that a director is assigned to a specified pay range, and provides only one way for it to be changed - that is by the State Employees Compensation Board. This Board has not approved a higher pay range in this particular situation.

Nowhere in R.C. Chapter 143 is there any authority for Lorain County to change or alter any of these statutory provisions or to supplement a salary. Rather, the intent of the legislature was to allow the civil service laws to be exclusive. Opinion No. 1651, Opinions of the Attorney General for 1950.

In specific answer to your question it is my opinion, and you are so advised, that pursuant to R.C. 143.091 a county welfare director is assigned to the proper pay range specified in R.C. 143.10, and a county is prohibited from making supplemental payments to a welfare director from the county general fund.