

**OPINION NO. 91-057****Syllabus:**

1. Construing R.C. 325.22 and the compensation schedules of R.C. Chapter 325 together, reductions in compensation for a county auditor, treasurer, sheriff, clerk of the court of common pleas, recorder, commissioner, prosecuting attorney, engineer, or coroner in a county where the population has decreased, according to the results of the 1990 federal decennial census, are to be implemented at the commencement of each new term of office following receipt of the federal decennial census figures by the Governor.
2. R.C. 325.18(D) does not prevent elected county officers whose terms commence subsequent to receipt of the census figures from being placed in a compensation classification that is lower than the compensation classification of other county officers whose terms of office have not expired.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Lee Fisher, Attorney General, December 31, 1991**

You have requested an opinion regarding the compensation of elected county officers whose terms of office commence after the receipt by the Governor of the 1990 federal decennial census figures. Specifically, you ask:

Does Section 325.18(D), Revised Code, prevent a reduction in compensation for elected county officials (auditor,<sup>1</sup> prosecuting attorney, engineer, treasurer, sheriff, clerk of the court of common pleas, recorder, commissioners and coroner) in a county where the population has decreased according to the results of the 1990 federal decennial census? (Footnote added.)

**R.C. Chapter 325 Compensation Schedules**

The amount of compensation for elected county officers is determined, in part, by the use of schedules set forth in statutes specific to each official. See R.C. 325.03 (auditor); R.C. 325.04 (treasurer); R.C. 325.06 (sheriff); R.C. 325.08 (clerk of court of common pleas); R.C. 325.09 (recorder); R.C. 325.10 (county commissioners); R.C. 325.11 (prosecuting attorney); R.C. 325.14 (engineer); R.C. 325.15 (coroner). Each of these schedules creates fourteen compensation classifications, which are defined by population ranges. An officer's compensation classification is determined on the basis of the population range that is applicable to the officer's county. Thus, as determined by use of the R.C. Chapter 325 compensation schedules alone, changes in population that place the county in a different population range will alter the compensation classification of each county

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<sup>1</sup> Based on the facts provided in your request and a discussion between members of our staffs, the county auditor has been added to the list of officers about whom you are concerned.

officer. This, in turn, results in an increase or decrease in the base salary figure of those officers.<sup>2</sup>

#### Application Of R.C. 325.22 In Instances Of Population Decline

Article II, §20 of the Ohio Constitution provides that "[t]he 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." This constitutional provision does not, however, prohibit in-term changes in the compensation of a public officer that occur automatically by application of a statutory formula enacted prior to the commencement of that officer's term. See *Schultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983) (citing *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E.2d 840 (1942) (syllabus, paragraph three)). Applying the analysis of *Guckenberger*, the first syllabus paragraph of 1982 Op. Att'y Gen. No. 82-047 concluded that "[t]hose sections of R.C. Chapter 325 that set forth compensation classifications for county officers based upon population require changes in compensation for the officers named therein in accordance with changes in population as shown by the 1980 federal decennial census." R.C. 1.59(D) states that "[p]opulation' means that shown by the most recent regular federal census." Thus, for purposes of implementing the foregoing compensation provisions of R.C. Chapter 325, the population figures shown by a federal decennial census become effective as of the date the Governor receives the official tabulations transmitted by the Secretary of the United States Department of Commerce. Op. No. 82-047 (syllabus, paragraph two).

Although in-term changes in the compensation of county officers based on the federal census figures are constitutionally permissible, R.C. 325.22 further provides as follows:

<sup>2</sup> In the case of the county auditor, for example, R.C. 325.03 states, in pertinent part, as follows:

Each county auditor shall be classified, for salary purposes, according to the population of the county. All such county auditors shall receive annual compensation in accordance with the following schedule:

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#### CLASSIFICATION AND COMPENSATION SCHEDULE FOR CALENDAR YEAR 1984 AND THEREAFTER

Class	Population Range	Compensation
1	1 - 20,000	\$22,781
2	20,001 - 40,000	24,134
3	40,001 - 55,000	25,410
4	55,001 - 70,000	26,258
5	70,001 - 85,000	27,126
6	85,001 - 95,000	29,976
7	95,001 - 105,000	30,891
8	105,001 - 125,000	31,785
9	125,001 - 175,000	33,534
10	175,001 - 275,000	34,669
11	275,001 - 400,000	37,616
12	400,001 - 550,000	38,894
13	550,001 - 1,000,000	40,083
14	1,000,001 and over	41,216

With respect to all officers, the compensation set by the R.C. Chapter 325 schedules is a base figure, which is further increased by the use of formulas set out in R.C. 325.11(B) (prosecuting attorney), R.C. 325.14(B)(1) (county engineer), and R.C. 325.18(A)-(C) (other county elected officers).

Notwithstanding anything to the contrary in this chapter, the compensation payable to a county auditor, county treasurer, county sheriff, clerk of the court of common pleas, county recorder, county commissioner, prosecuting attorney, county engineer, or county coroner shall not be reduced during the remainder of his term of office on account of a decline in the population of the county.

Thus, R.C. 325.22 prohibits a reduction in the amount of compensation payable to a county officer who is in the midst of a term at the time the census figures are received by the Governor. Op. No. 82-047 (syllabus, paragraph four). Conversely, R.C. 325.22 does not prohibit reductions in the compensation of officers whose terms commence after the receipt of the census figures by the Governor; the compensation of those officers must be reduced as each such officer commences a new term, through the use of the applicable compensation schedules set out in R.C. Chapter 325.

The 1990 federal decennial census figures were received by the Governor on February 19, 1991. Those figures have revealed population decreases in several counties sufficient to result in a reduction in the compensation of the elected county officers therein as determined under the pertinent compensation schedules in R.C. Chapter 325. As you note in your letter, the terms of office of most of the elected county officers began prior to the receipt of the census figures. See R.C. 305.01(A)-(B) (county commissioners); R.C. 309.01 (prosecuting attorney); R.C. 311.01(A) (sheriff); R.C. 313.01 (coroner); R.C. 315.01 (engineer); R.C. 317.01 (recorder); R.C. 321.01 (treasurer); R.C. 2303.01 (clerk of court of common pleas). Pursuant to R.C. 319.01, however, the terms of county auditors elected in November 1990 commenced on March 11, 1991, after the receipt of the census figures. Thus, a decline in a county's population will cause a reduction in the compensation of the county auditor, effective as of March 11, while the other in-term officers will continue to be paid at a higher rate, because R.C. 325.22 prevents reduction of their compensation during the remainder of their terms of office.

#### **Population Range Equalization Under R.C. 325.18(D)**

You have questioned whether an additional statute, R.C. 325.18(D), may prevent the reduction in the compensation of the county auditor required by the above analysis. R.C. 325.18(D) states:

Notwithstanding this section and sections 325.11 [salary of prosecuting attorney] and 325.14 [salary of county engineer] of the Revised Code,<sup>3</sup> when computing a salary for any elected county officer under any of such sections, if the population range for the class under which the officer is to be compensated is not the same as the population range for that class for any other such elected office, the class at which that officer's salary is determined shall be the highest class at which any officer from that county is compensated under the population ranges applicable to that officer. (Footnote added.)

You suggest that R.C. 325.18(D) may be interpreted to require a county to compensate all officers at the same compensation classification level, regardless of when the terms of those officers commence vis-a-vis the receipt of the census results. Because R.C. 325.22 prevents a reduction of the compensation payable to those officers whose terms commenced prior to receipt of the census figures, those officers remain in a higher compensation classification than would be applicable to the county auditor. Under the interpretation you suggest, R.C. 325.18(D) would then require that the county auditor also be paid pursuant to that higher classification. Carrying this analysis forward in time, when the current terms of the other county officers expire, and they would otherwise become subject to the reduction in compensation indicated by the census figures, the term of the auditor will not have

<sup>3</sup> By incorporation of the provisions of R.C. 325.18(A) and (B), R.C. 325.18(D) applies to the salary computations for the county treasurer, sheriff, clerk of court of common pleas, recorder, commissioners, coroner, and auditor, as well as to the salary computations for the county prosecuting attorney and engineer.

expired. R.C. 325.22 would prohibit an in-term change in the auditor's compensation. And, R.C. 325.18(D) would then prohibit placing the other officers in a lower compensation classification than the auditor. In essence, because receipt of the census figures occurred before the commencement of the term of office of the county auditor and after the commencement of the terms of the other elected officials, the suggested interpretation of R.C. 325.18(D), when read in conjunction with R.C. 325.22, creates a situation in which the pay reductions indicated by the census figures could never be implemented.

The impossibility of implementing census-related pay reductions indicates, in and of itself, that such an interpretation of R.C. 325.18(D) is incorrect. The General Assembly, through R.C. 1.59(D) and the compensation schedules of R.C. Chapter 325, has clearly linked the compensation of elected county officers to the size of the population, as evidenced by the federal census, of their respective counties. The purpose of R.C. 325.22 is to protect those officers from in-term reductions attributable to population decline. This protection is available to an officer, however, only during "the remainder of his term." R.C. 325.22. When read in conjunction with the pertinent compensation schedules in R.C. Chapter 325, it is apparent that R.C. 325.22 implicitly contemplates that such reductions shall take effect as each county officer commences a new term of office subsequent to the receipt of the census figures. Because the terms of elected county officers begin on different dates throughout the year, this system must result in a transition period during which some officers of the same county are in different compensation classifications. Thus, to interpret R.C. 325.18(D) as requiring all officers of a county to be in the same compensation classification at any one time renders the linkage between a county's population size and the compensation payable to those officers meaningless. See generally *Humphrys v. Winous Co.*, 165 Ohio St. 45, 133 N.E.2d 780 (1956) (syllabus, paragraph one) (arguably conflicting statutory provisions should be given a construction that does not nullify either).

The suggested interpretation is also not mandated by the plain language of R.C. 325.18(D). R.C. 325.18(D) requires that an officer's compensation class be adjusted "if the *population range for the class* under which the officer is to be compensated *is not the same as the population range for that class* for any other such elected office." (Emphasis added). The population ranges defining each compensation classification are not identical for the same classification in each of the schedules set out in R.C. Chapter 325. For purposes of compensating county auditors and treasurers, for example, class 12 has a population range of 400,001-550,000 and the population range of class 13 is 550,001-1,000,000. See R.C. 325.03; R.C. 325.04. With respect to other county officers, however, the population range of class 12 is 400,001-600,000 and the population range of class 13 is 600,001-1,000,000. See R.C. 325.06; R.C. 325.08-.11; R.C. 325.14; R.C. 325.15. Thus, as determined solely by use of the statutory schedules, a county with a population of 550,001-600,000 would have an auditor and treasurer in class 13, while the other officers would be in class 12. This would occur because the *population ranges* for compensation classes 12 and 13 with respect to county auditors and treasurers are not the same as the *population ranges* for those same classes with respect to the other county elected officers. R.C. 325.18(D), therefore, requires that all of the officers of such a county be placed in compensation class 13.

In contrast, receipt of the census figures does not change any of the population ranges that define the various compensation classifications. A particular county may move into a new population range, but the statutory range itself is unaffected. For example, in all of the compensation schedules, compensation class 3 is defined by a population range of 40,001-55,000 and compensation class 2 is defined by a population range of 20,001-40,000. Although the compensation listed for those two classifications is not the same for all the county officers in question, the population ranges defining classes 2 and 3 are identical for all officers. If the population of a particular county declines from 45,000 to 39,000, application of R.C. 325.22 and the compensation schedules of R.C. Chapter 325 will result in each of the county officers being removed from compensation class 3 and placed in compensation class 2 as they commence new terms of office. The statutory population ranges defining compensation classes 2 and 3, however, remain identical for each officer in the county, even though the officers will temporarily be in different compensation classifications. R.C. 325.18(D) applies only when the

population range defining a classification for an elected county officer is not the same "*for that class* for any other such elected office." (Emphasis added.) R.C. 325.18(D), therefore, does not prevent county officers commencing new terms after the receipt of the federal decennial census figures from being placed in a lower compensation classification, even though other county officers whose terms have not yet expired remain temporarily in a higher compensation classification pursuant to R.C. 325.22.

In summary, R.C. 325.18(D) does not require that all elected officers of a county be in the same compensation classification. Instead, it provides a limited exception to application of the R.C. Chapter 325 compensation schedules in instances where the population range defining the compensation classification of a particular officer differs from the population range defining that same classification for other officers in the county — as occurs, for example, in the population ranges defining compensation classes 12 and 13. As a practical matter, in most instances this will result in all of the officers of a county being placed in the same compensation classification. When, however, officers fall into different compensation classifications for reasons other than differences in the population ranges themselves, R.C. 325.18(D) does not apply. Thus, R.C. 325.18(D) does not apply to reductions in compensation classification caused by population decline. Such reductions should be implemented at the commencement of the new terms of the elected officers of the counties affected.

#### Conclusion

It is, therefore, my opinion and you are hereby advised that:

1. Construing R.C. 325.22 and the compensation schedules of R.C. Chapter 325 together, reductions in compensation for a county auditor, treasurer, sheriff, clerk of the court of common pleas, recorder, commissioner, prosecuting attorney, engineer, or coroner in a county where the population has decreased, according to the results of the 1990 federal decennial census, are to be implemented at the commencement of each new term of office following receipt of the federal decennial census figures by the Governor.
2. R.C. 325.18(D) does not prevent elected county officers whose terms commence subsequent to receipt of the census figures from being placed in a compensation classification that is lower than the compensation classification of other county officers whose terms of office have not expired.