

**OPINION NO. 80-024****Syllabus:**

Pursuant to R.C. 5901.04, a member of a county soldiers' relief commission who is selected as executive director of the commission and is given responsibility for the daily operation of the soldiers' relief program may receive compensation in an amount that exceeds the amount paid to the other members of the commission, provided that such amount is fair and the service performed by the executive director is proportionately greater than that performed by the other commissioners.

**To: Richard G. Ward, Ross County Pros. Atty., Chillicothe, Ohio**  
**By: William J. Brown, Attorney General, May 13, 1980**

I have before me your request for my opinion regarding compensation of the executive director of a county soldiers' relief commission. Your question may be restated as follows:

May a member of the Ross County Soldiers' Relief Commission receive compensation in excess of the compensation of the other commission members by virtue of his appointment by the Soldiers' Relief Commission to the position of executive director of the Commission?

R.C. 5901.02 provides for the appointment of a five-member commission in each county to manage the local soldiers' relief program. The soldiers' relief commission ("commission") members are required to select one member of the commission as president and one as secretary. R.C. 5901.03. The Ross County Soldiers' Relief Commission has, in addition, designated one of its members as "executive director" to manage the day-to-day operation of the soldiers' relief program. Although R.C. 5901.03 does not require that an executive director be appointed, the statute does not impose responsibility for the daily management of the soldiers' relief program on any particular member. Thus, I believe that the responsibility for these duties may be properly placed by a commission on one of its members.

Your question, then, is whether the executive director may receive compensation in an amount greater than that received by the other commission members. All of the members of a commission are allowed compensation for performance of their duties in accordance with R.C. 5901.04, which states:

On the presentation of an itemized statement, the board of county commissioners shall allow the persons composing the soldiers' relief commission the actual expenses incurred in the performance of their duties, and a fair compensation for their services. The county auditor shall issue his warrant upon the county treasurer for the amount so allowed.

Thus, the county commissioners must allow the commission members reimbursement for their actual expenses and must determine what additional amount will fairly compensate them for performance of their duties.

You explain that the Ross County Board of County Commissioners ("Board") has established the sum of \$100.00, paid biweekly, as fair compensation for a member of the Soldiers' Relief Commission. The Board has established the sum of \$370.00, paid biweekly, as fair compensation for the services performed by the executive director of the Commission. Your question, therefore, is whether R.C. 5901.04 permits the Board to grant the executive director a greater amount of compensation than is received by the other commissioners. I am aware of no cases or opinions of this office which address this specific question; however, a related problem arose under R.C. 5901.04, the resolution of which is helpful in responding to your request.

As was noted above, R.C. 5901.03 requires the commission members to select a president and a secretary from their number. The question whether the secretary of a soldiers' relief commission could receive compensation in an amount greater than that paid to the other commissioners was addressed in 1930 Op. Att'y Gen. No. 1651, p. 435. My predecessor concluded therein that, because the duties of the secretary were more burdensome than those of other commissioners, she could receive a greater amount as fair compensation for the additional duties she performed. My predecessor found no limitation on the amount that could be received by any member. In the analysis contained in 1930 Op. Att'y Gen. No. 1651, p. 435, 438, he explained as follows:

There would seem to be no valid reason why the county commissioners could not allow compensation to the secretary in an amount sufficient to reasonably compensate her for the services rendered in the furtherance of the functions of the commission. . . .

. . . [I]t would seem that the county commissioners may allow such sum as is reasonable for the compensation of the member of the soldiers' relief commission. A different amount would of course be required for the secretary, where the duties are more burdensome than those of the other members. (Emphasis added.)

Thus, the secretary may, due to his or her position and its concomitant additional duties, receive compensation in an amount greater than that received by the other commissioners.

It is clear that R.C. 5901.04 does not require that all commissioners receive an equal amount of compensation. Certainly equal compensation should be allowed for equal amounts of service. When one member performs more duties than the other members, however, R.C. 5901.04 presents no bar to allowing additional compensation therefor.

As is obvious from the statutory provisions setting forth the duties of the members of a soldiers' relief commission, daily meetings of the commission are not required. See R.C. 5901.05, 5901.11, 5901.12. From the information you have provided, however, it appears that the executive director of the Ross County Soldiers' Relief Commission is responsible for directing the daily operation of the relief program. This involves supervising employees of the Commission, approving emergency relief, compiling reports needed by the Commission, and coordinating the operation of the Commission with the county veterans' service officer. That the executive director of the Ross County Soldiers' Relief Commission is required to perform more duties than the other commission members is, thus, clear. If the executive director submits an itemized statement reflecting the performance of such duties, the Board must compensate him accordingly.

It should be noted that the compensation paid to the executive director and the other commission members may not be characterized as a fixed salary. Op. No. 1651, *supra*. Although the amount allowed as fair compensation under R.C. 5901.04 may remain the same over a period of time, the Board must be governed in its determination of what is a fair amount by the duties performed by each commission member and must allow compensation only upon presentation of an itemized statement reflecting performance of those duties. Hence, although the Board may use its discretion in setting an amount to be paid to the executive director of the Commission, the Board must follow statutory requirements in setting such amount.

You suggest that an earlier opinion of this office prohibits a commission member from receiving compensation in excess of that paid to the other members. In 1936 Op. Att'y Gen. No. 5577, p. 664, my predecessor concluded that a commission member could not be employed by the commission as a clerk, even though G.C. 2933-1 (now R.C. 5901.06) allows the commission to employ clerks and fix their compensation. That opinion turned upon the well-settled principle of law that a member of an administrative board may not, without express statutory authority, hold a salaried position under the board. The situation which you present is clearly different, for R.C. 5901.04 allows the commissioners to receive compensation in an amount proportional to the service performed on behalf of the commission. Thus, a member of a commission may be compensated under R.C. 5901.04 for services performed on behalf of the commission, even though he may not be employed by the commission in a salaried position. I conclude, therefore, that Op. No. 5577 does not affect the amount which the executive director may receive for performing duties in addition to those performed by the other commissioners.

Accordingly, it is my opinion, and you are advised, that, pursuant to R.C.

5901.04, a member of a county soldiers' relief commission who is selected as executive director of the commission and is given responsibility for the daily operation of the soldiers' relief program may receive compensation in an amount that exceeds the amount paid to the other members of the commission, provided that such amount is fair and the service performed by the executive director is proportionately greater than that performed by the other commissioners.