

OPINION NO. 67-016**Syllabus:**

Where a village official has performed his duties pursuant to what both he and the village council believed to be a valid ordinance, where he cannot be returned to his status quo, where he has conferred a benefit upon the village by performing his official duties, and where there is no showing of fraud, duress, or unfairness, he is entitled to retain the compensation he received prior to the time that the ordinance authorizing the payment of his compensation is declared invalid.

To: Roger Cloud, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 27, 1967

Your request for my opinion reads in part as follows:

"In 1961, village council passed a salary ordinance establishing compensation in varying amounts for the various village officials for the years 1962 and 1963. Apparently, this ordinance was self-limiting to be no longer in effect after 1963. In 1963 another salary ordinance was passed establishing a rate of pay or salary for each of the village officials in many cases

different than that prescribed in the 1961 ordinance. This ordinance was to be in effect for the years 1964 and 1965. Just recently this ordinance was declared void by a court of appeals.

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"1) Where a court holds that a salary ordinance is invalid, are the employees entitled to retain the compensation paid to them under such ordinance prior to the court decision?

"2) If your answer to the first question is in the negative, must the employees return the compensation received or can they retain an amount equal to that established by the prior salary ordinance or that established under a moral obligation or quantum meruit theory?

"3) If your answer to the second question is in one of the alternatives, what are the mechanics involved in making the payments and how do they affect the various appropriation ordinances involved?"

It is well settled that a village official is entitled to receive only such compensation as is expressly provided by ordinance. 44 Ohio Jurisprudence 2d, (Public Officers), page 634, Section 137. An ordinance which is declared void either because it is repugnant to the constitution or because it was procedurally defective is considered void ab initio and affords no protection nor confers any rights to those who acted pursuant to said ordinance. However, there have been many opinions holding that in the absence of any unfairness or fraud, where one acted relying upon the validity of an ordinance or a contract executed pursuant to an ordinance and that party cannot be returned to his status quo, the party who has performed his obligations should be allowed to retain said compensation according to the tenor of ordinance or contract. State v. Fronizer, 77 Ohio St. 7, (1907); Linton v. Carlisle, 2 N.P. (N.S.) 637; Will v. Taylor, 3 N.P. (N.S.) 505, affd. 77 Ohio St. 579; Thomas v. State, ex rel Gilbert, 76 Ohio St. 341; State v. Buckeye State Building and Loan Co., 67 Ohio App. 334-347 (1940).

An analogous situation was presented in State v. Fronizer, supra, where the court said at page 16 - 17:

"This court is of opinion that such recovery is not authorized. The principle applicable to the situation is the equitable one that where one has acquired possession of the property of another through an unauthorized and void contract, and has paid for the same, there can be no recovery back of the money paid without putting, or showing readiness to put, the other party in statu quo, and that rule controls this case unless such recovery is plainly authorized by the statute.

The rule rests upon that principle of common honesty that imposes an obligation to do justice upon all persons, natural as well as artificial, and is recognized in many cases. Chapman v. County of Douglas, 107 U.S., 348; Lee v. Board of Commissioners, 52 C.C.A., 376; Bridge Co. v. Utica, 17 Red Rep., 316."

Where there are no means by which the village officials may be returned to their status quo, where the village officials in rendering public services conferred a corresponding benefit upon the village, where both parties acted upon the assumption that the ordinance providing for the compensation of village officials was valid, and where there is no showing of fraud, duress or unfairness, the village officials are entitled to retain the compensation they received pursuant to said ordinance prior to the time it was declared void by a court of competent jurisdiction.

The above considerations are of a factual nature and a determination of these issues may not properly be made by this office.

Therefore, it is my opinion and you are advised that where a village official has performed his duties pursuant to what both he and the village council believed to be a valid ordinance, where he cannot be returned to his status quo, where he has conferred a benefit upon the village by performing his official duties, and where there is no showing of fraud, duress, or unfairness, he is entitled to retain the compensation he received prior to the time that the ordinance authorizing the payment of his compensation is declared invalid.