

**OPINION NO. 78-018****Syllabus:**

Article II, §20, Ohio Constitution prohibits any increase in per diem payments to a school board member resulting from the enactment of Am. S.B. No. 248 where such member held office prior to the effective date of such act. (1965 Op. Att'y Gen. No.65-206 overruled).

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**To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio**  
**By: William J. Brown, Attorney General, April 14, 1978**

I have before me your request for my opinion which reads, in pertinent part, as follows:

Is the compensation mentioned in Section 3313.12, as increased by Amended Senate Bill 248, a reimbursement of expenses, or does it constitute salary of the school board member receiving this compensation? Secondly, is this compensation available to school board members whose terms commence prior to the effective date of Amended Senate Bill 248?

As you state in your letter, Am. S.B. No. 248 (eff. November 21, 1977) amended R.C. 3313.12 to allow boards of education, other than county boards, by resolution to provide compensation to its members not to exceed forty dollars per meeting. Prior to the effective date of this act, R.C. 3313.12 provided for up to twenty dollars compensation per meeting.

Article II, §20, Ohio Constitution, provides as follows:

The 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.

In 1965 Op. Att'y Gen. No. 65-206, my predecessor analyzed the effect of this constitutional provision upon an increase of a school board member's per diem allowance, where such allowance was increased during the member's existing term. He concluded that such school board members were entitled to receive in term increases of their per diem allowances. This opinion was apparently grounded on the theory that such an allowance was not "salary" but "compensation" and therefore not proscribed by Article II, §20, Ohio Constitution.

Subsequent to that opinion, the Supreme Court, in State, ex rel. Artmayer v. Board, 43 Ohio St.2d 62 (1975) stated in its syllabus that:

The terms "salary" and "compensation" as used in Section 20, Article II of the Ohio Constitution, are synonymous.

The Court commented, at pp. 63-64, that the distinction relied upon in Op. No. 65-206 has been uniformly rejected by Ohio courts. It noted, at p. 65, that the question to be asked in determining whether the in-term salary prohibition of Article II, §20, Ohio Constitution has been violated is whether the number of dollars payable to an incumbent of a public office are increased by the enactment of a statute during his term of office.

I concluded, in 1977 Op. Att'y gen. No. 77-083, that a township trustee is not permitted to receive an increase in per diem compensation if his existing term in office commenced before the effective date of the act providing for such increase. The same result obtains in the instant situation. The per diem is specifically denominated "compensation" in R.C. 3313.12. Moreover, the number of dollars payable to the incumbent board members is increased. Accordingly, I am constrained to overrule Op. No. 65-206 and conclude that Article II, §20, Ohio Constitution prohibits any increase in per diem payments to a school board member resulting from the enactment of Am. S.B. No. 248 where such member held office prior to the effective date of such act. (1965 Op. Att'y Gen. No. 65-206 overruled).