

September 18, 2017

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
105 Main Street
P.O. Box 490
Painesville, Ohio 44077

SYLLABUS:

2017-029

A county coroner who, prior to commencing his term of office, informs the board of county commissioners that he will engage in the private practice of medicine and during his term of office elects not to engage in the private practice of medicine, may not receive, for the remainder of that term of office, the salary set forth in R.C. 325.15(A) for a county coroner who does not engage in the private practice of medicine.



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OPINION NO. 2017-029

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
105 Main Street
P.O. Box 490
Painesville, Ohio 44077

Dear Prosecutor Coulson:

You have requested an opinion whether a county coroner who, prior to commencing his term of office, informs the board of county commissioners that he will engage in the private practice of medicine may, during his term of office, elect not to engage in the private practice of medicine and receive, for the remainder of that term of office, the salary set forth in R.C. 325.15(A) for a county coroner who does not engage in the private practice of medicine. You explain that the number of autopsies and investigations to be conducted by the Lake County Coroner in 2017 is expected to significantly exceed the number performed in 2016. As a consequence of that unanticipated increase in workload, the current Lake County Coroner would like to retire from the private practice of medicine and perform exclusively the duties of the office of county coroner.

A county coroner's salary is set in accordance with the schedules and classifications in R.C. 325.15(A). R.C. 325.15(A) (“[a]ll coroners shall receive annual compensation in accordance with the following schedules and in accordance with [R.C. 325.18¹]”). The county's population and whether the county coroner elects to engage in the private practice of medicine while serving as the county coroner determine which classification and salary schedule apply to a particular county coroner. *Id.*²

¹ R.C. 325.18(C) provides for an annual increase in the salary of a county coroner from 2002 through 2008.

² You have informed us that Lake County has a population of 230,041. Thus, pursuant to R.C. 325.15(A), if the Lake County Coroner elects to engage in the private practice of medicine, his salary is set at \$69,739. Alternatively, if the Lake County Coroner elects not to engage in the private practice of medicine, his salary is set at \$127,563. Under certain circumstances, the Lake County Coroner who does not engage in the private practice of medicine may receive supplemental compensation under R.C. 325.15(C) and (D).

A county coroner in a county with a population of 175,001 or more is prohibited from engaging in the private practice of medicine while serving as county coroner, unless, prior to the commencement of his term of office, the county coroner informs the board of county commissioners of his intention to engage in the private practice of medicine. R.C. 325.15(B)(1) (“[a] coroner in a county with a population of one hundred seventy-five thousand one or more shall not engage in the private practice of medicine unless, before taking office, the coroner notifies the board of county commissioners of the intention to engage in that private practice”). Before the commencement of each new term of office, the county coroner shall elect to engage or not to engage in the private practice of medicine. *Id.* (“[a] coroner in such a county shall elect to engage or not to engage in the private practice of medicine before the commencement of each new term of office”). A county coroner who engages in the private practice of medicine and intends not to engage in the private practice of medicine during the next term of office shall notify the board of county commissioners in accordance with R.C. 325.15(B)(1) (*i.e.*, prior to the commencement of the county coroner’s term of office). An exception is provided in R.C. 325.15(B)(2), which states:

A coroner in a county with a population of one hundred seventy-five thousand one or more who elects not to engage in the private practice of medicine under [R.C. 325.15(B)(1)] may, during the coroner’s term of office, elect to engage in the private practice of medicine by notifying the board in writing of the intention to so engage. The notice shall state the date on which the coroner will commence the private practice of medicine and shall be given to the board at least thirty days before that date. On the date stated in the notice, the coroner’s compensation shall be reduced as provided in [R.C. 325.15(A)] and in [R.C. 325.18] for coroners with a private practice.

As you stated in your letter, neither division (B)(2) nor any other division of R.C. 325.15 indicates whether a county coroner who, prior to the commencement of his term office, elected to engage in the private practice of medicine and, during the term of office, elects not to engage in the private practice of medicine, may receive, for the remainder of that term of office, the higher salary set forth in R.C. 325.15(A).

The Attorney General addressed a similar question in 2009 Op. Att’y Gen. No. 2009-055 with respect to a county prosecuting attorney and R.C. 325.11. In that opinion, the Attorney General was asked whether a county prosecuting attorney who initially indicated “that he will engage in the private practice of law may decide during his term of office not to engage in the private practice of law in order to receive, during the remainder of his term of office, the salary prescribed for a county prosecuting attorney who does not engage in the private practice of law.” 2009 Op. Att’y Gen. No. 2009-055, at 2-409. At the time of the opinion, R.C. 325.11(B)³ stated, in pertinent part:

³ That provision now appears in R.C. 325.11(C). Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff. Sep. 29, 2015).

A prosecuting attorney shall not engage in the private practice of law unless before taking office the prosecuting attorney notifies the board of county commissioners of the intention to engage in the private practice of law.

A prosecuting attorney may elect to engage or not to engage in the private practice of law before the commencement of each new term of office, and a prosecuting attorney who engages in the private practice of law who intends not to engage in the private practice of law during the prosecuting attorney's next term of office shall so notify the board of county commissioners.

1999-2000 Ohio Laws, Part IV, 7756, 7784 (Sub. H.B. 712, eff. Dec. 8, 2000). Relying upon the word "before" in R.C. 325.11(B), the Attorney General reasoned that R.C. 325.11 requires a county prosecutor to elect to engage or not to engage in the private practice of law prior to assuming office. 2009 Op. Att'y Gen. No. 2009-055, at 2-410. The Attorney General noted that no provision in R.C. 325.11 authorized a prosecuting attorney, who initially elected to engage in the private practice of law, but then during his term of office elected not to engage in the private practice of law, to receive the higher salary for the remainder of the term of office. 2009 Op. Att'y Gen. No. 2009-055, at 2-411. Further,

[t]he language of R.C. 325.11(B) therefore unequivocally provides that, once a person who is elected to the office of county prosecuting attorney notifies the board of county commissioners of his intention to engage in the private practice of law while in office, the person is entitled to receive *during his entire term in office* the annual salary established in R.C. 325.11(A) for a county prosecuting attorney who engages in the private practice of law, rather than the higher annual salary established in R.C. 325.11(A) for a county prosecuting attorney who does not engage in the private practice of law.

2009 Op. Att'y Gen. No. 2009-055, at 2-411 (emphasis added). In addition, pursuant to R.C. 325.11(B), once a county prosecuting attorney has notified the county commissioners of his intention to engage in the private practice of law, he may effect a change in his salary for the next term of office if he decides that, during the next term of office, he will not engage in the private practice of law. 2009 Op. Att'y Gen. No. 2009-055, at 2-411. The Attorney General, thus, concluded:

A county prosecuting attorney who notifies a board of county commissioners prior to the commencement of his term of office that he will engage in the private practice of law may not decide during his term of office not to engage in the private practice of law in order to receive, during the remainder of his term of office, the salary prescribed for a county prosecuting attorney who does not engage in the private practice of law.

2009 Op. Att'y Gen. No. 2009-055 (syllabus).

The analysis and conclusion of 2009 Op. Att'y Gen. No. 2009-055 apply to R.C. 325.15. R.C. 325.15(B)(1) unequivocally requires that a county coroner elect whether or not to engage in the private practice of medicine prior to the commencement of the coroner's term of office. The General

Assembly intended that the effect of that election upon the county coroner's salary continue throughout the county coroner's term of office. The only exception provided by the General Assembly is for a county coroner who, prior to the commencement of his term of office elects not to engage in the private practice of medicine, but then during his term of office decides to engage in the private practice of medicine. R.C. 325.15(B)(2). In that situation, the county coroner may receive, for the remainder of the term of office, the lower salary provided in R.C. 325.15(A) for a county coroner with a private medical practice. *Id.* Insofar as the General Assembly has not included a provision in R.C. 325.15 for the reverse situation, we conclude that there is no authority for a county coroner, who elects during his term of office to discontinue his private practice of medicine, to receive for the remainder of the term of office, the salary set forth in R.C. 325.15(A) for a county coroner who does not engage in the private practice of medicine.

Based upon the foregoing, it is my opinion, and you are hereby advised that a county coroner who, prior to commencing his term of office, informs the board of county commissioners that he will engage in the private practice of medicine and during his term of office elects not to engage in the private practice of medicine, may not receive, for the remainder of that term of office, the salary set forth in R.C. 325.15(A) for a county coroner who does not engage in the private practice of medicine.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General