

OPINION NO. 83-093**Syllabus:**

Pursuant to R.C. 325.03, a county auditor who serves in a county with a population of between 83,001 and 85,000 persons is placed in class 5 and is entitled to compensation of \$27,126 for the calendar year 1984.

To: Lynn Alan Grimshaw, Scioto County Prosecuting Attorney, Portsmouth, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 21, 1983

I have before me your opinion request in which you ask: "What is the amount of compensation to which a county auditor is entitled. . .for the year 1984, where the population of the county in which he serves is between 83,001 and 85,000 [persons?]"

R.C. 325.03, which governs the compensation of county auditors, was amended in Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff., in pertinent part, Nov. 26, 1982), and now states, in part:

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:

. . . .

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 — 83,000	27,126
6	83,001 — 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

According to this schedule, it appears that no provision is made for compensating a county auditor serving in a county with a population of between 83,001 and 85,000 persons.

It is well settled that the meaning of a statute should be ascertained from the language employed. Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902). Only where the language of a statute is ambiguous and the meaning unclear may courts resort to other means of interpretation. Slingluff.

R.C. 325.03 states that "[e]ach" county auditor shall be classified for salary purposes according to the population of the county. Pursuant to R.C. 1.42, words in a statute are to be construed according to their ordinary meaning. In Webster's New World Dictionary 437 (2d college ed. 1978), "each" is defined as "every one of two or more considered separately." It is clear, therefore, that the legislature intended that all county auditors be placed in one of the fourteen classes set forth in the schedule and compensated accordingly. As stated above, however, R.C. 325.03 establishes no classification for auditors serving in counties having a population of between 83,001 and 85,000 persons. Because of this ambiguity in the statute, it is permissible to look beyond the literal terms of the statute in order to determine its meaning. See State ex rel. v. Archibald, 52 Ohio St. 1, 38 N.E. 314 (1894).

Since R.C. 325.03 establishes classifications based upon county population figures ranging continuously from one person to over 1,000,001 persons, with the exception of the range extending from 83,001 to 85,000 persons, it is obvious that a typographical or clerical error exists in the schedule. The means for correcting such an error is set forth in Archibald, 52 Ohio St. at 9-10, 38 N.E. at 316:

When it thus appears beyond doubt that a statute, when read literally as printed, is impossible of execution, or will defeat the plain object of its enactment, or is senseless, or leads to absurd results or consequences, a court is authorized to regard such defects as the result of error or mistake, and to put such construction upon the statute as will correct the error or mistake, by carrying out the clear purpose and manifest intention of the legislature. The error or mistake, as well as the proper correction, must appear beyond doubt from the face of the act, or when read in connection with other acts in pari materia.

See also Stanton v. Frankel Brothers Realty Co., 117 Ohio St. 345, 350, 158 N.E. 868, 870 (1927) ("[i]t is a well-settled rule that courts will not permit a statute to be defeated on account of a mistake or error, where the intention of the Legislature can be collected from the whole statute, or where one word has been erroneously used for another, and where the context affords the means of correction. The strict letter of a statute must yield to the obvious intent").

Looking at the compensation schedule for calendar year 1984 and thereafter as set forth in R.C. 325.03, it is evident that the upper limit of each population range, with the exception of class 5, is established as some multiple of 5,000. It is, therefore, apparent that the figure 83,000, the upper limit for class 5, should be read as 85,000. Such a reading would make the population range for class 5 consistent with the ranges established for the other classifications set forth in the schedule.

That the legislature intended the figure 83,000 to be read as 85,000 is further supported by examination of the legislative history of R.C. 325.03. R.C. 1.49 ("[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters. . . former statutory provisions, including laws upon the same or similar subjects. . ."). See Slingluff (syllabus, paragraph one) (where the provisions of a statute are ambiguous and the meaning of a statute is unclear, the history of legislation on the subject may be considered). Prior to its amendment in Am. Sub. S.B. 550, R.C. 325.03 established the upper limit of the population range for class 5 at 85,000. Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981). In amending R.C. 325.03 in Am. Sub. S.B. 550, the legislature did not indicate in the usual manner¹ an intent to change the figure 85,000 to 83,000. Rather, the figure 85,000, as set forth in Am. Sub. H.B. 694, merely appears as 83,000 in Am. Sub. S.B. 550. It is clear, therefore, that the General Assembly did not intend to amend that figure. In the absence of any showing that the legislature intended to amend that figure, I believe that the population range for class 5 should be read as extending from 70,001 to 85,000, rather than from 70,001 to 83,000.²

Based on the foregoing, it is my opinion, and you are advised, that pursuant to R.C. 325.03, a county auditor who serves in a county with a population of between 83,001 and 85,000 persons is placed in class 5 and is entitled to compensation of \$27,126 for the calendar year 1984.

¹ Pursuant to Ohio Legislative Service Commission, Bill Drafting Manual (4th ed. 1977), in order to amend an existing section of the Revised Code, any matter that is to be deleted is stricken through with a horizontal line, usually a series of hyphens. New matter to be added which cannot be capitalized, such as punctuation marks or numerals, is underlined if it is not both preceded and followed by capitalized new matter.

² See, e.g., Stanton v. Frankel Brothers Realty Co., 117 Ohio St. 345, 158 N.E. 868 (1927). In Stanton, the court construed a statute which gave "the county auditor of any complainant" the right to appeal a decision of the county board of revision. The court concluded that there is no such person or official as the county auditor of any complainant. In order to determine the proper meaning of that term, the court examined the prior version of the statute which stated that "the county auditor or any complainant" had the right of appeal. The court then concluded that a literal reading of the statute was obscure and meaningless and because the legislature indicated no intent to change the word "or" to "of," the statute should be read in the manner set forth in the preceding version of the statute.