

**OPINION NO. 75-057****Syllabus:**

A county, which has one judge of the court of common pleas and one judge of the probate division of that same court, does have two judges of the court of common pleas, and the compensation of the county's law librarian is, therefore, not limited under R.C. 3375.48 to \$500.00 per annum.

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**To: Norman P. Smith, Shelby County Pros. Atty., Sidney, Ohio**  
**By: William J. Brown, Attorney General, September 4, 1975**

I have before me your request for my opinion which reads as follows:

"The Shelby County Law Librarian recently questioned the limitation on the amount of compensation he is to receive under Section 3375.48 of the Ohio Revised Code. That particular Section of the Code provides that the compensation paid to the law librarian, in counties which have only one judge of the common pleas court, shall not exceed \$500.00 per annum.

"Shelby County has a judge of the common pleas court and a judge of the probate division of the common pleas court.

"Both the common pleas judge and law librarian requested that I seek your opinion on the following question:

"Is the judge of the probate division of the common pleas court a second judge of the common pleas court within the meaning of Section 3375.48 of the Ohio Revised Code?"

R.C. 3375.48 states that:

"The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, upon the appointment by the board of trustees of such association of a person to act as librarian thereof, or of a person to act as librarian and not more than two additional persons to act as assistant law librarians thereof, shall fix the compensation of such persons, which shall be paid from the county treasury. In counties where not more than one judge of the court of common pleas holds regular terms of court at the same time, the compensation to be paid such librarian shall not exceed the sum of five hundred dollars per annum."

(Emphasis added.)

In determining whether the judge of the probate division of the Court of Common Pleas is a judge of the Court of Common Pleas within the meaning of R.C. 3375.48, *supra*, it is appropriate to examine other pertinent statutes relating to probate judges and the probate division of the Court of Common Pleas.

Prior to 1969, R.C. 2101.01 provided that a probate court, in addition to a Court of Common Pleas, be established in each county, thus suggesting that the probate court and the Court of Common Pleas may have been separate courts. However, this section was amended effective November 19, 1969, to read as follows:

"A probate division of the court of common

pleas shall be held at the county seat in each county in an office furnished by the board of county commissioners, in which the books, records, and papers pertaining to the probate division shall be deposited and safely kept by the judge thereof. The board shall provide suitable cases for the safekeeping and preservation of the books and papers of the court, and furnish such blankbooks, blanks, and stationery as the probate judge requires in the discharge of official duties. The probate judge shall employ and supervise all clerks, deputies, referees, and employees of the probate division.

"As used in the Revised Code, 'Probate Court' means the probate division of the court of common pleas, and 'probate judge' means the judge of the court of common pleas who is judge of the probate division. All pleadings, forms, journals, and other records filed or used in the probate division shall be entitled 'In the Court of Common Pleas, Probate Division,' but are not defective if entitled 'In the Probate Court.'"

(Emphasis added.)

Thus, a probate "division" of the court of common pleas is now established in each county. In addition, R.C. 2101.01, quoted above, provides quite clearly that as used in the Revised Code probate judge means the judge of the common pleas who is judge of the probate division of the court of common pleas.

R.C. 2301.02, which provides for the number of judges for each county and the date the term of office begins, reads in part as follows:

"Judges of the probate division of the court of common pleas are judges of the court of common pleas, but shall be elected pursuant to sections 2101.02 and 2101.021 [2101.02.1] of the Revised Code, except in Adams, Henry, Morrow, and Wyandot counties in which the judge of the court of common pleas elected pursuant to this section shall also serve as judge of the probate division."

(Emphasis added.)

Again, even though probate judges are elected separately from common pleas judges, they are nonetheless to be considered judges of the court of common pleas.

Furthermore, Section 2101.32, Revised Code, states that the rules and procedure of the court of common pleas shall govern proceedings in the probate court stating in pertinent part as follows:

"The probate judge shall have the powers, perform the duties, and be governed by the rules and regulations provided for the courts of common pleas and the judges thereof in vacation. The sections of the Revised Code governing civil proceedings in the court of common pleas shall govern like proceedings in the probate court when there is no provision on the subject in

Chapters 2101. to 2131., inclusive, of the Revised Code."

(Emphasis added.)

I find it evident from the foregoing that a judge of the probate division of the court of common pleas is a judge of the court of common pleas for purposes of R.C. 3375.48.

Therefore, it is my opinion and you are so advised that a county, which has one judge of the court of common pleas and one judge of the probate division of that same court, does have two judges of the court of common pleas, and the compensation of the county's law librarian is, therefore, not limited under R.C. 3375.48 to \$500.00 per annum.