

**OPINION 65-56****Syllabus:**

1. Lawrence County is required to pay two-fifths of the increase in the salary of the Clerk of the Municipal Court of Ironton, when the increase has been duly authorized by the Ironton City Council as provided in Section 1901.31 (C), Revised Code.

2. Lawrence County is required to pay two-fifths of the increase in the salary of the bailiff of the Municipal Court of Ironton, when the increase has been duly authorized by the Municipal Court as provided in Section 1901.32 (A), Revised Code.

3. The County is required to make payment of such increases even though the amount of the increases is not included in the appropriations for the year 1965 made by the board of county commissioners.

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**To: Dennis J. Callahan, Lawrence County Pros. Atty., Ironton, Ohio**  
**By: William B. Saxbe, Attorney General, April 9, 1965**

You request my opinion upon the following question:

"Is Lawrence County required to pay two-fifths of the increases in salaries of the

clerk and bailiff of the Municipal Court of Ironton when such increase of the clerk's salary has been duly authorized by the Ironton City Council and such increase of the bailiff's salary has been duly authorized by the Judge of the Municipal Court of Ironton but such two-fifths of such increases in salaries are not included in the appropriations for the year 1965 made by the County Commissioners of Lawrence County?"

The applicable portion of Section 1901.11, Revised Code, is as follows:

\* \* \* \* \*

"The compensation of municipal judges shall be paid in semi-monthly installments, three fifths of such amount being payable from the city treasury and two fifths of such amount being payable from the treasury of the county in which such city is situated. \* \* \*"

Section 1901.03, Revised Code, provides as follows:

"As used in sections 1901.04 to 1901.38 inclusive, of the Revised Code:

"(A) 'Territory' means the geographical areas within which municipal courts have jurisdiction as provided in sections 1901.01 and 1901.02 of the Revised Code.

"(B) Legislative authority, ' \* \* \* and 'city treasury' have reference to the city in which the court is located."

As the geographical area of jurisdiction of the Ironton Municipal Court has less than one hundred thousand population, the applicable portion of Section 1901.31, Revised Code, is as follows:

"(C) In territories having a population of less than one hundred thousand, the clerk of a municipal court shall receive such annual compensation as the legislative authority prescribes. \* \* \* Such compensation is payable in semimonthly installments from the same sources and in the same manner as provided in Section 1901.11 of the Revised Code.

"The clerk's compensation shall not exceed that of the clerk of courts of the county in which the municipal court is located.

\* \* \* \* \*

I agree with the following quotation from pages 175 and 176 Opinion No. 3697, Opinion of the Attorney General for 1954,

page 173:

"It should be noted that paragraph (C) of Section 1901.31, Revised Code, provides that in territories having a population of less than one hundred thousand, the clerk of the municipal court shall receive such annual compensation as the legislative authority prescribes. This same paragraph provides that 'such compensation is payable in semi-monthly installments from the same sources and in the same manner as provided in Section 1901.11 of the Revised Code'. In such cases, therefore, the entire compensation, and without any minimum salary being fixed by statute, is prescribed by the legislative authority of the municipality. Again, it is clear that two-fifths of such compensation is payable from the treasury of the county and three-fifths of such compensation is payable from the treasury of the county and three-fifths payable from the treasury of the city."

The applicable portion of Section 1901.32, Revised Code, is as follows:

"The bailiffs and deputy bailiffs of a municipal court shall be provided for,  
\* \* \* as follows:

"(A) The court shall appoint a bailiff who shall receive such annual compensation as the court prescribes payable in semimonthly installments from the same sources and in the same manner as provided in section 1901.11 of the Revised Code. The compensation of the bailiff shall not exceed that of the clerk of the municipal court.  
\* \* \*"

Thus it is obvious from the words: 'shall be paid in semimonthly installments, \* \* \* two fifths of such amount being payable from the treasury of the county in which such city is situated,' as stated in such Section 1901.11, Revised Code, and incorporated by reference in such Sections 1901.31 and 1901.32, that the payment of two fifths of the salaries of the clerk and the bailiff of the Municipal Court of Ironton, which salaries have been fixed in accord with such Sections respectively, is mandatory and without any authority upon the County Commissioners to modify or disallow such payments by failure to appropriate or otherwise. Such sections do not impose any limitations as to the time when such salaries are to be fixed or their payment to commence, but require that

they be paid in semi-monthly installments which obviously would commence upon the effective date of such salaries as fixed according to the statutes.

The following is quoted from Section 307.55, Revised Code:

"No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon proper certificate of the person or tribunal allowing the claim.

\* \* \*                      \* \* \*                      \* \* \*  
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The following is quoted from Section 319.16, Revised Code:

"The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal so authorized by law."

Certainly, as the salary of the clerk of the Municipal Court of Ironton and the bailiff of said Court are allowed by law to be fixed by the city council of Ironton and by that Court, respectively, the mandatory payment of the two fifths of the salary of each of them by the county is within the exceptions stated in each of such two Sections 307.55 and 319.16, Revised Code, without any allowance or appropriation thereof by the board of county commissioners of said county.

The case of Smith v. Smith, 93 Ohio App. 294, involved the liability of the county for payment for services of an investigator appointed by the Common Pleas Court without any allowance therefor by the county commissioners. The following is quoted from the opinion of the Court of Appeals at Pages 298 and 299:

"In Opinions of Attorney General (1951), 723, No. 913, rendered November 9, 1951, it

is said in part:

'If a Court of Common Pleas desires to appoint one or more investigators who shall be paid in a manner different from the formula set forth in Section 1693, General Code, it may do so by virtue of a court's inherent power to do those things necessary for the performance of its business, so long as such number of investigators are paid upon the allowance of the county commissioners in accordance with Section 2460, General Code' (Section 307.55, Revised Code, supra), \* \* \*

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"This court is in general agreement with the conclusion reached by the Attorney General. We are, however, of the opinion that under the exception in the statute payment may be made upon warrant of the county auditor upon the proper certificate of the Common Pleas Court Judge allowing the claim."

Accordingly, in response to your inquiry my opinion is as follows:

1. Lawrence County is required to pay two-fifths of the increase in the salary of the Clerk of the Municipal Court of Ironton, when the increase has been duly authorized by the Ironton City Council as provided in Section 1901.31(C), Revised Code.
2. Lawrence County is required to pay two-fifths of the increase in the salary of the bailiff of the Municipal Court of Ironton, when the increase has been duly authorized by the Municipal Court as provided in Section 1901.32(A), Revised Code.
3. The County is required to make payment of such increases even though the amount of the increases is not included in the appropriations for the year 1965 made by the board of County Commissioners.