

OPINION NO. 90-004**Syllabus:**

R.C. 1901.12, which governs vacation benefits for municipal court judges, does not authorize payment to a judge for any vacation leave to which he is entitled but does not use.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 9, 1990

I have before me your opinion request concerning vacation benefits for municipal court judges. Specifically, you ask: "under what circumstances if any, may a municipal court judge be paid for unused vacation leave?" From information attached to your request it appears that this question has arisen because a particular municipality has adopted a policy which allows payment to its permanent full-time employees for unused vacation leave. The judge of the municipal court located within that city wishes to know whether he is entitled to payment for unused vacation leave in accordance with the city's policy. Based upon such information, your concern appears to be limited to the permissibility of such payment as a form of compensation to the judge.

The city's vacation leave payment policy may be characterized as a fringe benefit. See 1987 Op. Att'y Gen. No. 87-063. A fringe benefit is part of

compensation. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). Thus, payment for unused vacation leave may be considered a part of compensation. Under Ohio Const. art. XVIII, §3, a city may fix the compensation of its officers and employees. See *Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). A municipality does not, however, have such authority with respect to municipal court judges. As stated in 1983 Op. Att'y Gen. No. 83-042 at 2-161:

The compensation of municipal court judges is set by the General Assembly, not by the city in which the court is located. See R.C. 1901.11. See generally 1983 Op. Att'y Gen. No. 83-009 (compensation of municipal court judges). Specifically excepted from the compensation scheme set forth in R.C. 1901.11 is that part of a judge's compensation for "any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination thereof, covering a judge of the municipal court and paid on his behalf by a governmental entity." R.C. 1901.11.¹ I am not, however, aware of any other exceptions to the compensation scheme set by the General Assembly for municipal court judges.² (Emphasis and footnotes added.)

I then concluded that, "[s]ince a city within which a municipal court is located has no authority to set the compensation of the municipal court judges, the city has no authority to pay the [attorney] registration fee for municipal court judges as part of their compensation." *Id.* Such analysis applies equally to the question you ask.

Concerning the vacation leave of municipal court judges, the legislature has enacted R.C. 1901.12, which states in pertinent part:

(A) *A municipal judge is entitled to thirty days of vacation in each calendar year. Not less than two hundred forty days of open session of the municipal court shall be held by each judge during the year, unless all business of the court is disposed of sooner.*

(B) *When a court consists of a single judge, a qualified substitute may be appointed in accordance with [R.C. 1901.10(A)(2)] to serve during the thirty-day vacation period, who shall be paid in the same manner and at the same rate as the incumbent judge, except that, if the substitute judge is entitled to compensation under [R.C. 141.04(A)(5)], then [R.C. 1901.121] shall govern its payment. (Emphasis added.)*

The vacation benefit to which a municipal court judge is entitled is thus defined by statute as "thirty days...in each calendar year," R.C. 1901.12(A). Nothing in R.C. 1901.12 authorizes payment to be made to a judge who does not use the full vacation leave to which he is entitled. Absent such express provision, I must conclude, that the legislature did not intend that municipal court judges be given such alternative. Cf. R.C. 124.13 (governing vacation leave for full-time state employees, providing in part: "Upon separation from state service an employee shall be entitled to compensation at his current rate of pay for all lawfully accrued and unused vacation leave to his credit at the time of separation up to three years"); R.C.

¹ Although the quoted language of R.C. 1901.11 has slightly changed, and now appears at R.C. 1901.11(E), the analysis of such provision set forth in 1983 Op. Att'y Gen. No. 83-042 remains unaffected.

² Since issuance of Op. No. 83-042, R.C. 141.04 was amended in 1987-1988 Ohio Laws, Part II, 2170, 2193 (Am. Sub. H.B. 171, eff. in part July 1, 1987) to provide additional salary payments to municipal court judges from the state treasury. Again, specifically excluded from the term "salary," as used in R.C. 141.04, is "any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination of those benefits, covering...a judge named in this section and paid on his behalf by a governmental entity." R.C. 141.04(E).

325.19(C) ("[a]n employee [of the county] is entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment"). In the absence of statutory authorization for payment to a municipal court judge for any unused vacation leave, the judge is not entitled to such payment, regardless of the vacation leave payment policy governing city employees of the city in which the court is located. See 1986 Op. Att'y Gen. No. 86-025 at 2-132 ("[i]n absence of statutory authority therefor, a municipal court judge may not, pursuant to Ohio Const. art. IV, §6(B), participate in an 'in lieu of salary increase' pick up plan [for retirement contributions]").

It is, therefore, my opinion, and you are hereby advised, that R.C. 1901.12, which governs vacation benefits for municipal court judges, does not authorize payment to a judge for any vacation leave to which he is entitled but does not use.