

## OPINION NO. 79-044

**Syllabus:**

Where a township has not paid out the maximum compensation authorized by R.C. 507.09(C) as a result of a period of vacancy in the office of the township clerk, R.C. 507.09(D) prohibits the trustees from compensating any clerk for that interim period.

**To: James R. Unger, Stark County Pros. Atty., Canton, Ohio**

**By: William J. Brown, Attorney General, July 31, 1979**

I have before me your request for my opinion in which you ask the following questions:

1. When a township has compensated two or more individuals who have served as township clerks in a single year in accordance with State ex rel. Schinkal and R.C. 507.09(D), and as a result of a period of vacancy between the holding of office by these clerks the maximum compensation permitted by R.C. 507.09(C) has not been disbursed, may the trustees divide this unpaid amount between the clerks?
2. If such compensation can be divided, in what manner may the funds be apportioned amongst the officeholders?

Your questions arise as a result of a period of vacancy in the office of the township clerk after the death of the duly elected incumbent. According to the information you have provided me, the clerk of Lexington township died on October 12, 1978, having been paid \$3,854.30. A successor was appointed on October 24, and was paid a prorated amount of \$942.40 for the period from October 24 to December 31, 1978, based upon the decision in State ex rel. Ryland v. Schinkal, 49 Ohio St. 2d 1 (1976), (hereinafter Ryland), and R.C. 507.09(D). The maximum compensation authorized pursuant to R.C. 507.09(C)(1) for the Lexington township clerk in 1978 was \$5,000.00. (R.C. 507.09(C) was amended by Am. S.B. 237, effective 1977, but is inapplicable here because the clerk took office in 1976.) The compensation paid to both clerks in 1978 totaled \$4,796.70, leaving \$203.30 unpaid from the \$5,000.00 appropriation for the office.

You have informed me that prior to 1976, most townships compensated their clerks by determining the amount of township expenditures in excess of \$5,000.00 which the clerk had handled each month, and then paying the clerk 3% of that amount pursuant to R.C. 507.09(C). As a result of this method of paying compensation, clerks in townships having large budgets often received their total maximum yearly compensation long before the year's end. This is the situation which arose in Ryland. There, a township clerk was paid the total \$6,000.00 compensation allowed in that township, and his successor in office was claiming the right to receive \$2,835.82 for the same year as the percentage of the amount of expenditures he had handled during his term. The township contended that as the appropriation for the office had been expended, the successor was entitled to nothing. The Supreme Court disagreed with both positions, stating:

The just and reasonable result in determining the maximum compensation to which a township clerk is entitled is quite obvious-- he should be paid for the period during which he actually serves. Plainly, the statute [R.C. 507.09(C)] intends both that the clerk be paid a reasonable compensation and that the expense which townships must accordingly bear be limited. Both of these purposes are accomplished simply by pro-rating the maximum compensation in accordance with the length of service rendered. If the clerk is entitled to \$6,000 for a year, he should be entitled for \$3,000 for 6 months, \$500 for a month, and so on . . ." Id., 49 Ohio St. 2d at 4.

Shortly after the Ryland decision, the General Assembly enacted R.C. 507.09(D), Am. S.B. No. 237 (1977). This section requires that the compensation of township clerks be paid in equal monthly installments, and further provides:

. . . If the office of clerk is held by more than one person during any calendar year, each person holding the office shall receive payments for only those months, and any fractions thereof, during which he holds the office.

In the situation you have presented, the maximum compensation of \$5,000.00 had been divided into 12 equal monthly payments, and each clerk was paid for the months employed, and fractions thereof, in accordance with R.C. 507.09(D). Thus, as the office was vacant for 14 days, an amount of \$203.30 remained unexpended. You state that both individuals handled sufficient funds to entitle each to this sum under R.C. 507.09(C). Your question, therefore, is whether R.C. 507.09(D) limits the operation of R.C. 507.09(C). I conclude that it does.

Although townships have traditionally viewed R.C. 507.09(C) as not only setting the maximum salary for clerks, but also as providing the manner of making payments, the court in Ryland made it clear that the statute fixes only the limit of a clerk's salary, not the method of disbursement. R.C. 507.09(D) now provides the manner in which a township clerk's salary shall be paid. Despite the fact that neither Ryland nor R.C. 507.09(D) specifically deals with a situation where township clerks have not served successively in a single year, to construe R.C. 507.09 as authorizing a township to pay out funds which remain undisbursed as a result of an interim period of vacancy would be contrary to the spirit, if not the letter, of R.C. 507.09(D). Ryland stated that a clerk should be paid only for that period during which he or she actually serves. R.C. 507.09(D), which codified the Ryland holding, provides that if the clerkship is held by more than one person during a year, each shall be paid only for the months during which office is held. As such, the necessary implication is that no person is entitled to be paid for a period of vacancy in the office.

Moreover, R.C. 1.47(C) states that "[i]n enacting a statute, it is presumed that . . . a just and reasonable result is intended." A construction of R.C. 507.09(D) authorizing a division of funds unexpended because of periods of vacancy in the office is unwarranted in view of the inequitable consequences which might ensue. For example, two or more clerks in a single year may have served for only brief periods, yet have handled sufficient amounts of township expenditures to entitle each to the total compensation permitted by R.C. 507.09(C). Thus, if the office had remained vacant for a substantial amount of time, a division of the year's maximum salary among the clerks would lead to the payment of compensation far out of proportion to the length of time a clerk had served the township. In order to effectuate a just and reasonable result, therefore, I conclude the General Assembly intended that R.C. 507.09(D) qualify R.C. 507.09(C) and prohibit the payment of compensation that has arisen due to an interim period of vacancy to any individual. With respect to your specific inquiry, the trustees of Lexington township cannot pay out the undisbursed \$203.30 to either the successor clerk, or to the estate of the deceased clerk.

In view of the foregoing, an answer to your second question is unnecessary.

Accordingly, it is my opinion, and you are so advised, that where a township has not paid out the maximum compensation authorized by R.C. 507.09(C) as a result of a period of vacancy in the office of township clerk, R.C. 507.09(D) prohibits the trustees from compensating any clerk for that interim period.