OPINION NO. 2002-006

Syllabus:

1. A county treasurer who was elected for a term beginning September 1, 1997 and ending September 2, 2001, and who was reelected in November 2000 for a four-year term beginning September 3, 2001, is entitled to receive for the time he served from January 1, 2001 through September 2, 2001 a prorated portion of the annual compensation fixed for his county's population class for calendar year 2001 by R.C. 325.04 and R.C. 325.18, as they read on September 1, 1997. The prorated portion is to be calculated by multiplying the applicable daily

rate of pay by 245 days, or if the treasurer did not serve for his entire term, by the number of days he actually served in office between January 1 and September 2, 2001.

2. A county treasurer who was elected for a term beginning September 1, 1997 and ending September 2, 2001, and who was reelected in November 2000 for a four-year term beginning September 3, 2001, is entitled to receive for the time he serves from September 3, 2001 through December 31, 2001 a prorated portion of the annual compensation fixed for his county's population class for calendar year 2001 by R.C. 325.04, as amended by Sub. H.B. 712, 123rd Gen. A. (2000) (eff. Dec. 8, 2000). The prorated portion is to be calculated by multiplying the applicable daily rate of pay by 120 days, or if the treasurer does not serve for the entire period, by the number of days he actually serves in office between September 3 and December 31, 2001.

To: Jim Petro, Auditor of State, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, February 21, 2002

You have asked for an opinion concerning the proper amount of compensation that county treasurers, who were reelected to office in November 2000, should be paid in calendar year 2001. You have received inquiries as to whether county treasurers, who served from September 1, 1997 through September 2, 2001 and were reelected to a term beginning on September 3, 2001, are entitled to receive the full amount of annual compensation for calendar year 2001, as fixed in R.C. 325.04 and increased by the General Assembly in Sub. H.B. 712, 123rd Gen. A. (2000) (eff. Dec. 8, 2000).

Compensation Scheme

We begin with a discussion of the statutory scheme established for the election and compensation of county treasurers. County treasurers are elected quadrennially and serve a four-year term, beginning on the first Monday of September following their election to office. R.C. 321.01. Elections for county treasurer were held in each county in November 2000, and thus treasurers who were elected or reelected at that time began their new terms on September 3, 2001.

R.C. 325.04 establishes a "classification and compensation schedule" for county treasurers that groups counties into classes, based on population size, and assigns an "annual compensation" figure to each class for each named calendar year.[1] *See generally* 1999 Op. Att'y Gen. No. 99-033. Until recently, R.C. 325.04 grouped counties into fourteen

---

[1]Although the salary of county treasurers is set as an annual rate, treasurers (as well as other county officers and employees) are paid on a biweekly basis. R.C. 325.01; R.C. 325.17. *See also Ohio Council 8 v. Weber*, 27 Ohio App. 3d 133, 135, 499 N.E.2d 1276, 1279 (Marion County 1985) (R.C. 325.17 guarantees that a county employee will "receive his full annual compensation on a biweekly basis"); 1981 Op. Att'y Gen. No. 81-021 (syllabus) ("[t]he language of R.C. 325.17 does not prohibit a county auditor from issuing twenty-seven biweekly paychecks when the calendar year includes twenty-seven payperiods as long as the total amount so paid does not exceed the authorized annual compensation").

classes, and compensation schedules were provided for calendar years 1981, 1982, 1983, and 1984 "and thereafter."[2] R.C. 325.18, enacted in 1984, provided that in calendar years 1985 through 2000, the annual compensation for county treasurers was to be increased by specified percentages; the annual compensation for calendar years subsequent to 2000 was to remain at the amount set for calendar year 2000.[3]

In December 2000, comprehensive legislation providing for adjustments to the compensation of elected officials was enacted. Sub. H.B. 712 amended R.C. 325.04 to compress the fourteen classes into eight classes, beginning with calendar year 2001, and set forth the annual compensation for each class for calendar years 2000 and 2001. For calendar year 2000, the annual compensation set forth in R.C. 325.04, as amended by Sub. H.B. 712, was the same amount county treasurers were entitled to receive in calendar year 2000 under the versions of R.C. 325.04 and R.C. 325.18 in effect immediately prior to the enactment of Sub. H.B. 712. However, Sub. H.B. 712 increased the annual compensation of county treasurers for calendar year 2001 over that of calendar year 2000.[4]

For example, prior to the enactment of Sub. H.B. 712, the annual compensation for treasurers serving counties with a population of over one million was $60,695 for both calendar years 2000 and 2001. Sub. H.B. 712 fixed the annual compensation for treasurers in that population range at $60,695 for 2000 and $64,704 for 2001.

Calculation of Pro Rata Compensation

Although the compensation of a county treasurer is fixed by statute as an annual rate and paid biweekly to the officeholder, *see* note 1, *supra*, it is, as explained in 1990 Op. Att'y Gen. No. 90-023, earned by the treasurer on a daily basis. 1990 Op. Att'y Gen. No. 90-023 addressed the proper method for determining the compensation of a county sheriff whose term began on January 2, 1989 and ended on January 4, 1993. The county auditor had paid the sheriff for 364 days of service in 1989 and intended to pay him for 4 days in 1993. The question arose whether this manner of payment was a correct interpretation of the words "annual compensation" as used in R.C. 325.06 and R.C. 325.18.[5] In concluding that it was, the opinion noted that the words "annual compensation" are used in conjunction with the words "calendar year," and that the words "'calendar year' are commonly understood to designate the period from January 1 through December 31."[6] *Id.* at 2-86. Thus, the opinion

---

[2]*See* 1981-1982 Ohio Laws, Part I, 1297, 1312 (Sub. H.B. 1, eff. Aug. 5, 1981) (R.C. 325.04); 1995-1996 Ohio Laws, Part III, 4589, 4619 (Am. Sub. H.B. 408, eff. May 8, 1996) (R.C. 325.18).

[3]*See* 1983-1984 Ohio Laws, Part II, 4937, 4954 (Am. Sub. H.B. 897, eff. Dec. 26, 1984). *See also* 1987-1988 Ohio Laws, Part I, 1639, 1651 (Am. S.B. 452, eff. Dec. 15, 1988); 1991-1992 Ohio Laws, Part IV, 6097, 6099 (Am. H.B. 684, eff. Oct. 8, 1992); Am. Sub. H.B. 408.

[4]R.C. 325.18 was also amended by Sub. H.B. 712 to provide, *inter alia*, that for each calendar year from 2002 through 2008, the annual compensation of each county treasurer is to be increased by the lesser of 3% or the percentage increase in the consumer price index. R.C. 325.18(C). *See* note 8, *infra*.

[5]R.C. 325.06 sets forth the classification and compensation schedules for county sheriffs and is analogous to R.C. 325.04 for county treasurers. The term of a county sheriff begins on the first Monday of January following his election, rather than the first Monday of the following September. R.C. 311.01(A).

[6]In so concluding, 1990 Op. Att'y Gen. No. 90-023 cites *State ex rel. Gareau v. Stillman*, 18 Ohio St. 2d 63, 64-65, 247 N.E.2d 461, 462 (1969), which interpreted the phrase "calendar

continued, "the legislature has specified that the annual compensation of elected county officials is an amount fixed for actual calendar years," that is, from January 1 through December 31.[7] *Id.* Accordingly, when a county officer's term "includes only part of a particular calendar year, the [officer] is entitled to a prorated portion of the annual compensation fixed for that year ... which portion should be calculated to reflect the number of days in that calendar year which are included in the [officer's] term of office." *Id.* (syllabus, paragraph two).

1990 Op. Att'y Gen. No. 90-023 thus makes clear that the annual compensation figure fixed for a calendar year is not a guaranteed amount to which a county officer is entitled regardless of whether his term extends for the entire twelve months of the year. The annual compensation figure does provide the basis upon which an officer's daily rate of pay may be determined when his term expires prior to the end of the calendar year, or if he resigns or otherwise relinquishes his office prior to the expiration of his term, and it is necessary to prorate his compensation based on the number of days he served in office during that year.

We return to our example. As noted above, prior to the enactment of Sub. H.B. 712, treasurers serving counties with a population of over one million were entitled to be compensated in calendar year 2001 at an annual rate of $60,695. However, because our treasurer's term ended on September 2nd and thus included only part of calendar year 2001, he was entitled only to a portion of the $60,695 for that year. An annual rate of $60,695 is equal to a daily rate of $166.29. Thus, if the treasurer completed his term, he would have been entitled to receive the prorated amount of $40,741.05 for serving from January 1, 2001 through September 2, 2001 ($166.29 per day for 245 days).

Ohio Const. art. II, § 20

We turn now to the effect that Sub. H.B. 712, enacted in 2000, has on the 2001 compensation of county treasurers who served a term ending on September 2, 2001 and were reelected to a new term beginning on September 3, 2001. In so doing, we must consider Ohio Const. art. II, § 20, which prohibits any change, whether an increase or decrease, in a public officer's salary or compensation "during his existing term," and is applicable to county treasurers and all other elected county officers. *See State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); *State ex rel. Mikus v. Roberts*, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968); 1999 Op. Att'y Gen. No. 99-033; 1989 Op. Att'y Gen. No. 89-087. *See also Musser v. Morton*, 639 F.2d 309 (6th Cir. 1981) (holding that Ohio Const. art. II, § 20 does not violate the federal equal protection rights of county commissioners not eligible for an in-term increase in compensation). Ohio Const. art. II, § 20 forbids "the granting of in-term salary increases to officers when such changes are the result of direct legislative action on the section(s) of the Revised Code which are the basis of the

---

year" as meaning "the period of time from January 1 through December 31," and rejecting the argument that it means merely the passage of 365 days. *See also* 1996 Op. Att'y Gen. No. 96-042. Cf. R.C. 1.44(B) (defining "[y]ear" to mean "twelve consecutive months").

[7]1990 Op. Att'y Gen. No. 90-023 rejects the position that "annual compensation" is an amount fixed for a "term year," which refers to a year in office and, in the case of a county sheriff, is measured from the first Monday in January in one year to the first Monday in January in the next year. *Id.* at 2-86. Similarly, the annual compensation of a county treasurer is not measured from the first Monday in September of one year to the first Monday in September in the next year.

officers' salaries." *Schultz v. Garrett*, 6 Ohio St. 3d 132, 135, 451 N.E.2d 794, 798 (1983). A county treasurer who was elected to a four-year term beginning on September 1, 1997 was clearly prohibited by Ohio Const. art. II, § 20 from receiving, during the four-year term, any increase in compensation resulting from legislation enacted subsequent to that date, including Sub. H.B. 712.[8]

We turn again to our example. As discussed above, a treasurer who was elected to a term of office beginning in September 1997, in a county with a population of over one million, was entitled under the law in effect at the time, *see* note , to receive compensation at an annual rate of $60,695 (or daily rate of $166.29) for calendar year 2001. Because his term included only part of calendar year 2001, he was entitled to the pro rated amount of $40,741.05 for serving from January 1, 2001 through September 2, 2001. Although Sub. H.B. 712 increased the annual compensation for calendar year 2001 to $64,704 (or $177.27 per day), a treasurer whose term began prior to the enactment of Sub. H.B. 712 was precluded by Ohio Const. art. II, § 20 from receiving compensation at the higher rate for the time he spent in office from January 1 through September 2, 2001.[9]

Reelected Officeholders

A treasurer who was elected in November 2000 in a county with a population of over one million was entitled, however, to begin receiving compensation at a rate of $64,704 per year, or $177.27 per day, on September 3, 2001, the first day of his new term, and will receive the pro rata amount of $21,272.40 for the 120 days he spends in office from

---

[8]If, however, a statutory scheme linking the compensation of a public office to an external factor, such as the population of the territory served by the office, is in effect prior to the commencement of an officer's term, and the officer's compensation level is automatically increased during his term due to a change in the external factor, he would not be constitutionally prohibited from receiving the increase during his existing term, so long as there was no direct change in the statutory sections setting forth the formula for determining the compensation. *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E.2d 840 (1942). *See also Schultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983). Thus, a county treasurer is not prohibited by Ohio Const. art. II, § 20 from receiving an in-term increase in compensation that results from a population increase placing his county in a higher classification in the classification and compensation schedule of R.C. 325.04, so long as the schedule was in effect prior to the commencement of the treasurer's term. *See* 1999 Op. Att'y Gen. No. 99-033; 1989 Op. Att'y Gen. No. 89-087; 1982 Op. Att'y Gen. No. 82-047.

Similarly, an officer may receive periodic automatic pay increases that are part of a statutory scheme enacted prior to the commencement of his term. 1993 Op. Att'y Gen. No. 93-006; 1986 Op. Att'y Gen. No. 86-106. As mentioned above, R.C. 325.18, as amended by Sub. H.B. 712, provides for increases in compensation for county treasurers in calendar years 2002 through 2008. Ohio Const. art. II, § 20 does not prohibit a county treasurer who was elected to a term beginning on September 3, 2001 from receiving these increases.

[9]If, however, a treasurer resigned, died, or otherwise relinquished his office prior to the expiration of his term, and a person was appointed after December 8, 2000, the effective date of Sub. H.B. 712, to fill the vacancy until September 2, 2001, the new treasurer would have been entitled to receive compensation at the rate provided in Sub. H.B. 712. *See State ex rel. Glander v. Ferguson*, 148 Ohio St. 581, 76 N.E.2d 373 (1947). In keeping with our analysis, the new treasurer would have been entitled to receive a pro rata amount of the annual compensation fixed by Sub. H.B. 712 for the portion of any calendar year during which he served.

September 3 through December 31, 2001. Thus, a treasurer who was reelected in November 2000 will earn, for finishing one term and beginning a new one in calendar year 2001, a total of \$62,013.45—\$40,741.05 for serving from January 1st through September 2nd, and \$21,272.40 for serving from September 3rd through December 31st (assuming he actually serves in office for all 365 days).

An argument has been made that there is an inconsistency between R.C. 321.01 and R.C. 325.04 because treasurers do not take office until the first Monday of September, yet R.C. 325.04 speaks in terms of "annual compensation" for a "calendar year." Thus, some reelected treasurers have argued that the language in R.C. 325.04 pertaining to "calendar year 2001" means that, by December 31, 2001, they should have received the full amount of compensation set forth in Sub. H.B. 712 for 2001; and, because reelected treasurers were precluded by Ohio Const. art. II, § 20 from receiving the higher pay provided in Sub. H.B. 712 until the commencement of their new term on September 3, 2001, the treasurers argue that their biweekly compensation must be increased, beginning on September 3rd, to a level such that, by December 31st, they will have been paid the full amount of the annual compensation for calendar year 2001 set forth in Sub. H.B. 712 for their county's population class. This argument must fail as violative of both the compensation scheme established by R.C. Chapter 325 and Ohio Const. art. II, § 20.

As discussed above, the annual compensation fixed in R.C. 325.04 for any calendar year is earned by the officeholder on a daily basis, and is not a guaranteed amount the officeholder will receive regardless of the length of his term or the number of days he spends in office during that calendar year. If an officeholder serves during only part of a calendar year, he is entitled only to a corresponding portion of the annual compensation set forth in statute, based on the number of days in his term that were included in that calendar year (or the number of days he actually served during the year if he did not serve his entire term). *See also State ex rel. Glander v. Ferguson*, 148 Ohio St. 581, 76 N.E.2d 373 (1947) (applying the prohibition of Ohio Const. art. II, § 20 against a change in the salary of any officer during "his existing term," and holding that the phrase "his existing term" is personal, applying to the time actually served by a particular incumbent, and not to the period constituting the statutory term of office). So construed, R.C. 321.01 and R.C. 325.04 are not inconsistent. *See generally State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (statutes relating to the same subject matter should be construed in pari materia and harmoniously). This analysis holds true regardless of whether the compensation of an office has been statutorily increased during the course of an officer's term and regardless of whether he was reelected to office or is serving his first term.

If we thus view the treasurer in our example as earning compensation on a daily basis, his rate of compensation for serving from January 1 through September 2, 2001 must remain at \$166.29 per day (\$40,741.05), in order to avoid running afoul of Ohio Const. art. II, § 20. Therefore, if he were entitled to a total of \$64,704 for calendar year 2001 when he began his new term on September 3rd, he would be entitled to payment at a rate of \$199.69 per day (\$23,962.95) for serving from September 3rd through December 31st. This is contrary to Sub. H.B. 712, which entitles him to receive only \$177.27 per day (or \$21,272.40).

The fallacy of the argument is further demonstrated by the disparate treatment it would afford reelected and newly elected officers taking office on September 3, 2001. Treasurers who were reelected would receive compensation at a rate of \$199.69 per day, while those who did not serve during the preceding term ending on September 2, 2001 would receive compensation at a rate of \$177.27. This disparity is without foundation in statute. The compensation scheme simply does not differentiate among county treasurers based on the number or sequence of terms they have served.

Treasurers who were elected in 1996 were clearly prohibited from receiving any increase in salary that was enacted after the commencement of their term on September 1, 1997 and are not now entitled to receive the total annual compensation fixed by Sub. H.B. 712 for calendar year 2001 merely because they were reelected to office. Stated another way, a treasurer elected to a term beginning September 3, 2001 is not entitled to receive a higher rate of pay during 2001 merely because he had served in office during the next preceding term. To conclude otherwise would not only run counter to the pertinent statutory scheme but would, in effect, grant such treasurers an increase in compensation for the earlier 1997-2001 term in violation of Ohio Const. art. II, § 20.[10]

The treasurer in our example was prohibited by Ohio Const. art. II, § 20 from receiving the pay increase provided by Sub. H.B. 712 during his 1997-2001 term. If, upon his re-election, he were to receive compensation at a daily rate such that he would earn $64,704 for calendar year 2001, he would, in effect receive an in-term pay increase, retroactive to January 1, 2001, in clear circumvention of Ohio Const. art. II, § 20. *See generally Teale v. Stillinger*, 95 Ohio St. 129, 136, 115 N.E. 1010, 1012 (1916) (stating that if a county treasurer were allowed to receive compensation for the performance of his duties in excess of that provided by law, "he will be doing indirectly the very thing forbidden by law"); *City of Parma Heights v. Schroeder*, 93 Ohio L. Abs. 247, 196 N.E.2d 813 (C.P. Cuyahoga County 1963) (striking down the attempt of city council members to receive an in-term increase in compensation by resigning from office and being immediately reappointed, stating that a public official cannot do indirectly what he cannot do directly).

Other Implications

Although your question asks specifically about treasurers who were reelected, the argument that the language in R.C. 325.04 referring to annual compensation for a calendar year guarantees an officeholder that full amount regardless of when his term commenced, has implications for other factual scenarios. For example, a newly elected county treasurer, who began his first term on September 3, 2001, could argue that, because R.C. 325.04 sets forth an annual compensation figure for a calendar year, he is entitled to receive the entire amount of annual compensation for serving in office from September 3rd through December 31st. Similarly, a treasurer whose term ended in early September could argue he was entitled to the entire amount fixed for that calendar year, as could a treasurer who resigned or otherwise relinquished his office prior to the expiration of his term. Would a treasurer who resigned during the first week of January be entitled to receive the entire annual compensation fixed for the calendar year? Taking the argument to its extreme, a reelected treasurer could argue that he was entitled to receive the entire annual compensation prescribed by statute for serving the last part of his first term from January 1 through September 2 and the entire annual compensation for serving the first part of his second term from September 3 through December 31 of that same year. These arguments arise independently of the issues raised by Ohio Const. art. II, § 20, and could be made by any treasurer regardless of whether there was recent legislation authorizing increases in compensation.

---

[10]While the Office of the Attorney General has no authority to determine the constitutionality of a statute, either facially or as applied, *see* 1980 Op. Att'y Gen. No. 80-002 at 2-14 n.1, it is well established that statutes are presumed to be constitutional, and courts will interpret a statute in order to preserve its constitutionality. *See* R.C. 1.47(A); *Wilson v. Kennedy*, 151 Ohio St. 485, 492, 86 N.E.2d 722, 725 (1949).

This type of scenario was briefly addressed in 1990 Op. Att'y Gen. No. 90-023. As a corollary to the position that the annual compensation of a county officer must be prorated based on the number of days in that calendar year which were included in his term of office, 1990 Op. Att'y Gen. No. 90-023 specifically rejected the notion that officers could receive pay for days not included in their term of office, stating, "[t]he length of the period defined by the word 'year' *affects the daily rate of pay*, but the use of one length 'year' as opposed to another *does not change the number of days for which compensation is due*." *Id.* at 2-87 n.2 (emphasis added). Simply put, an officer is not entitled to be paid for time not spent in office, yet this is the logical consequence of applying the argument, that reelected treasurers are guaranteed the entire annual compensation fixed by Sub. H.B. 712 for 2001, to all those who serve in office for only a portion of a calendar year. *See* R.C. 1.47 ("[i]n enacting a statute, it is presumed that ... (C) [a] just and reasonable result is intended").

Conclusion

Therefore, a county treasurer who began his term of office on September 3, 2001 is entitled only to a pro rata portion of the annual compensation fixed for calendar year 2001 by Sub. H.B. 712, regardless of whether he was reelected to that office, or was elected to that office for the first time. Such portion must be calculated to reflect the number of days in calendar year 2001 that are included in the treasurer's term of office and that he actually serves.

It is, therefore, my opinion, and you are hereby advised that:

1. A county treasurer who was elected for a term beginning September 1, 1997 and ending September 2, 2001, and who was reelected in November 2000 for a four-year term beginning September 3, 2001, is entitled to receive for the time he served from January 1, 2001 through September 2, 2001 a prorated portion of the annual compensation fixed for his county's population class for calendar year 2001 by R.C. 325.04 and R.C. 325.18, as they read on September 1, 1997. The prorated portion is to be calculated by multiplying the applicable daily rate of pay by 245 days, or if the treasurer did not serve for his entire term, by the number of days he actually served in office between January 1 and September 2, 2001.

2. A county treasurer who was elected for a term beginning September 1, 1997 and ending September 2, 2001, and who was reelected in November 2000 for a four-year term beginning September 3, 2001, is entitled to receive for the time he serves from September 3, 2001 through December 31, 2001 a prorated portion of the annual compensation fixed for his county's population class for calendar year 2001 by R.C. 325.04, as amended by Sub. H.B. 712, 123rd Gen. A. (2000) (eff. Dec. 8, 2000). The prorated portion is to be calculated by multiplying the applicable daily rate of pay by 120 days, or if the treasurer does not serve for the entire period, by the number of days he actually serves in office between September 3 and December 31, 2001.