

OPINION NO. 82-010

Syllabus:

The one hundred dollar limitation for expenses of the board of county visitors contained in R.C. 331.03 applies to the total expenses of the entire board for any year, and not to the total expenses of each of its individual members.

To: B. Edward Roberts, Marion County Prosecuting Attorney, Marion, Ohio
By: William J. Brown, Attorney General, March 1, 1982

I have before me your request for my opinion concerning the expenses of a board of county visitors. The expenses of the board of county visitors are provided for in R.C. 331.03, which reads as follows:

The board of county visitors shall serve without compensation, but actual expenses incurred in the discharge of its duties and actual necessary expense incurred by any member, to be selected by such board, in visiting any other charitable or correctional institution for the purpose of information, and in attendance upon any convention or meeting held within this state in the interest of and to deliberate upon charitable or correctional methods and work, to an amount not to exceed one hundred dollars in any year, shall be allowed by the board of county commissioners. The county auditor shall issue a warrant for such expense which shall be paid by the county treasurer, provided the judge of the probate court has issued a certificate that the members of the board of county visitors have satisfactorily performed their duties, as provided in sections 331.04 to 331.06, inclusive, of the Revised Code. (Emphasis added.)

Specifically, your question asks whether the one hundred dollar limitation on expenditures applies to the total expenses of the entire board or to the total expenses of each of its individual members.

An identical question was addressed by one of my predecessors in 1935 Op. Atty Gen. No. 4933, vol. III, p. 1528. 1935 Op. No. 4933 concluded that the one hundred dollar ceiling imposed by G.C. 2973,¹ the predecessor to R.C. 331.03, was a limitation upon the total expenses of the entire board in any given year. This result followed from the established administrative practice of interpreting G.C. 2973 as placing such a ceiling upon the board's annual expenses. See generally 1920 Op. Atty Gen. No. 1621, vol. II, p. 1041.

It is my understanding that the administrative practice which formed the basis for 1935 Op. No. 4933 has been carried through to the present day. Thus, what was an established practice in 1935 has, forty-seven years later, become firmly established. As my predecessor noted, "administrative interpretation of a law, if long continued, while not conclusive, is nevertheless to be reckoned with most seriously and not disregarded and set aside unless judicial construction makes it imperative so to do." 1935 Op. No. 4933, at 1529-30 (citing, *inter alia*, Industrial Commission of Ohio v. Brown, 92 Ohio St. 309, 110 N.E. 744 (1915)).

¹G.C. 2973, the former version of R.C. 331.03, read as follows:

The board of county visitors shall serve without compensation, but actual expenses incurred in the discharge of its duties and actual necessary expenses incurred by any member or members to be selected by such board in visiting any other charitable or correctional institution for the purpose of information, and in attendance upon any convention or meeting held within this state in the interest of and to deliberate upon charitable or correctional methods and work to an amount not to exceed one hundred dollars in any year, shall be allowed by the county commissioners. The county auditor shall issue a warrant therefor which shall be paid by the county treasurer, provided that the judge of the probate court has issued a certificate that the members of the board have satisfactorily performed their duties as provided in subsequent sections.

When G.C. 2973 was recodified as R.C. 331.03 in 1953, the language of G.C. 2973 was used almost verbatim.² Clearly, the purpose of statutory construction "is to give effect to the intention of the Legislature." Henry v. Central National Bank, 16 Ohio St. 2d 16, 20, 242 N.E.2d 342, 345 (1968) (citation omitted). Noting the similarity between R.C. 331.03 and G.C. 2973, one can infer that the General Assembly must have intended R.C. 331.03 to be given the same interpretation as that given its predecessor, G.C. 2973. Thus, as there has been no significant change in the statutory language, I have no reason to believe that a change in the interpretation of the statute is warranted. Therefore, I must conclude, in accordance with 1935 Op. No. 4933, that the one hundred dollar ceiling for expenses of the board of county visitors contained in R.C. 331.03 is a limitation upon the entire board rather than a limitation on the expenses of each member.

There has been some concern expressed over the inadequacy of the funds provided for the county board of visitors by R.C. 331.03. The one hundred dollar ceiling was established by the General Assembly in 1906. 98 Ohio Laws 27 (S.B. 74, eff. March 3, 1906). Although likely constituting a reasonable provision in 1906, the limitation may no longer be realistic. However, it is not the role of the Attorney General to legislate. See 1980 Op. Att'y Gen. No. 80-011. This power is vested solely in the General Assembly and any change in the law must be made by that body.

Therefore, it is my opinion, and you are advised, that the one hundred dollar limitation for expenses of the board of county visitors contained in R.C. 331.03 applies to the total expenses of the entire board for any year, and not to the total expenses of each of its individual members.

²The refinements evidenced in R.C. 331.03 are minor and do not affect the analysis of your question.