

OPINION NO. 83-009**Syllabus:**

1. Pursuant to R.C. 1901.11(F), the compensation increases for municipal judges provided in R.C. 1901.11(C), (D), and (E) are not subject to the limitation of R.C. 1901.11(B).
2. For purposes of R.C. 1901.11(B), the statutory compensation of a judge of the court of common pleas includes all amounts to which such a judge is entitled pursuant to R.C. 141.04 and 141.05.
3. Whether a municipal judge makes more money than a common pleas judge depends upon the population of the territory or county in which each resided when elected or appointed.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 24, 1983

I have before me your request for an interpretation of the provisions of R.C. 1901.11, as recently amended by Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981). Those provisions govern the compensation of municipal judges. R.C. 1901.11 states, in relevant part, as follows:

(A) Judges designated as part-time judges by section 1901.08 of the Revised Code shall receive as compensation fifteen thousand dollars per annum, plus an amount, not to exceed ten thousand dollars per annum, equal to eighteen cents per capita for the population of the territory in which they reside when elected or appointed, as ascertained by the most recent regular federal census. . . .

(B) Judges designated as full-time judges by section 1901.08 of the Revised Code and all judges of territories having a population of more than fifty thousand regardless of designation are subject to

section 4705.01 of the Revised Code¹ and shall receive as compensation twenty-eight thousand seven hundred fifty dollars per annum, plus an amount equal to eighteen cents per capita for the population of the territory in which they reside when elected or appointed, as ascertained by the most recent regular federal census. The compensation of any municipal judge, other than a presiding judge who is also an administrative judge shall not be more than three thousand dollars per annum less than the statutory compensation of a judge of the court of common pleas of the county in which the municipal court is situated, or thirty-eight thousand seven hundred fifty dollars, whichever is less. The presiding judge of a municipal court who is also the administrative judge of the court, shall receive an additional one thousand five hundred dollars over and above the salaries paid to any other judge of the same court. . . .

(C) Beginning on January 1, 1982, the compensation of each judge described in division (A) of this section shall be increased in addition to all other compensation by four thousand two hundred dollars per annum and the compensation of each judge described in division (B) of this section shall be increased in addition to all other compensation by seven thousand dollars per annum.

(D) Beginning on January 1, 1983, the compensation of each judge described in division (A) of this section shall be further increased in addition to all other compensation by three thousand dollars per annum and the compensation of each judge described in division (B) of this section shall be further increased in addition to all other compensation by five thousand dollars per annum.

(E) Beginning on January 1, 1984, the compensation of each judge described in division (A) of this section shall be further increased in addition to all other compensation by three thousand dollars per annum and the compensation of each judge described in division (B) of this section shall be further increased in addition to all other compensation by five thousand dollars per annum.

(F) The compensation increases provided in divisions (C), (D), and (E) of this section shall not be subject to any limitation on the amount of compensation contained in division (B) of this section. (Emphasis and footnote added.)

Your specific questions concerning the provisions are as follows:

1. Are the compensation increases provided in Divisions (C), (D), and (E) of Section 1901.11 subject to the limitation contained in Division (B)?
2. If the answer to the preceding question is in the negative, may a municipal judge make more money [than] a common pleas judge?

R.C. 1901.11(B) sets forth the compensation of certain municipal judges and provides the limitation that the compensation of a municipal judge (other than a presiding judge who is also an administrative judge) shall not exceed the lesser of the following: (1) "three thousand dollars per annum less than the statutory compensation of a judge of the court of common pleas of the county in which the municipal court is situated"; or (2) \$38,750. R.C. 1901.11(C), (D), and (E) provide for progressive increases in the compensation of municipal judges to begin on January 1 of 1982, 1983, and 1984. The provisions state that the specified increases shall be "in addition to all other compensation."

R.C. 1901.11(F) is directly responsive to your first question. It states expressly: "The compensation increases provided in divisions (C), (D), and (E) of this section shall not be subject to any limitation on the amount of compensation contained in division (B) of this section."

¹R.C. 4705.01 prohibits judges from engaging in the practice of law, except in specified instances.

Plain language in a statute should be given its usual and ordinary meaning. R.C. 1.42. See, e.g., Industrial Commission v. Roth, 98 Ohio St. 34, 39, 120 N.E. 172, 173 (1918). If there is no doubt as to the scope or meaning of a statute, there is no right—or need—to construe the statute. See Swetland v. Miles, 101 Ohio St. 501, 130 N.E. 22 (1920). The language of R.C. 1901.11(F) clearly excepts the compensation increases provided in R.C. 1901.11(C), (D), and (E) from the limitation on compensation contained in R.C. 1901.11(B). I conclude, therefore, that the compensation increases provided in R.C. 1901.11(C), (D), and (E) are not subject to the limitation contained in R.C. 1901.11(B).

I note, however, that the compensation provided to a municipal judge pursuant to R.C. 1901.11(B) remains subject to the limitation contained therein.² The limitation of R.C. 1901.11(B) applies generally to the "compensation of any municipal judge" (other than a presiding judge who is also an administrative judge) and, read by itself, this limitation would seem to restrict the total compensation of a municipal judge to the lesser of the amounts there provided. It is, however, axiomatic that all parts of a statute should be construed together. First Federal Savings & Loan Ass'n v. Evatt, 143 Ohio St. 243, 249, 54 N.E.2d 795, 797 (1944). When read together with R.C. 1901.11(F), the limitation of R.C. 1901.11(B) is clearly applicable only to compensation of a municipal judge excluding the compensation increases provided in R.C. 1901.11(C), (D), and (E). Hence, the language of R.C. 1901.11(F) authorizes payment of the increases authorized by R.C. 1901.11(C), (D), and (E), even though total compensation thereby awarded will exceed the limits set forth in R.C. 1901.11(B), but it does not authorize payment pursuant to R.C. 1901.11(B) of an amount greater than that which could previously have been paid pursuant to that division.

As a result, a municipal judge subject to R.C. 1901.11(B) will be paid \$28,750 plus eighteen cents per capita, up to a maximum of the lesser of (1) \$3,000 less than the statutory compensation of a judge of the common pleas court of the county in which the municipal court is located or (2) \$38,750. He will also receive \$7,000 (R.C. 1901.11(C)), \$5,000 (R.C. 1901.11(D)), and, beginning on January 1, 1984, an additional \$5,000 (R.C. 1901.11(E)).

Your second question asks whether a municipal judge may make more money than a common pleas judge.³ Statutory provisions governing the compensation of a judge of the court of common pleas appear in R.C. Chapter 141. R.C. 141.04 provides, in relevant part:

(A) The annual salaries of . . . the judges named in this section payable from the state treasury are as follows:

. . .

(4) Judges of the court of common pleas, twenty-nine thousand five hundred dollars;

²The limitation of R.C. 1901.11(B) is applicable, by its terms, to any municipal judge, other than a presiding judge who is also an administrative judge. Thus, it appears to apply also to part-time judges compensated pursuant to R.C. 1901.11(A). Those judges are, however, entitled to a maximum of \$25,000 pursuant to R.C. 1901.11(A). Thus, the limitation of R.C. 1901.11(B) would never take effect. See R.C. 141.04(A)(4) (setting the annual salary of a common pleas judge at \$29,500).

³In answering this question, I am looking at compensation paid to the judges in the form of salary. I am excluding from consideration "any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination thereof," which may be paid on behalf of a judge by a governmental entity, even as such amounts are excluded from the statutory provisions governing compensation of the judges. R.C. 141.04, 141.05, 1901.11.

. . . .

(B) Beginning on January 1, 1982, the annual salary of each judge listed in division (A) of this section shall be increased in addition to all other salary and compensation by seven thousand dollars. . . .

(C) Beginning on January 1, 1983, the annual salary of each judge listed in division (A) of this section shall be further increased in addition to all other salary and compensation by five thousand dollars. . . .

(D) Beginning on January 1, 1984, the annual salary of each judge listed in division (A) of this section shall be further increased in addition to all other salary and compensation by five thousand dollars. . . .

R.C. 141.05 provides for additional annual compensation in the amount of eighteen cents per capita for the population of the county in which the common pleas judge resided when elected or appointed, as ascertained by the latest federal census, but not to be less than \$3,500 or more than \$14,000.⁴ Under these provisions, a common pleas judge shall receive an annual salary of \$29,500 (R.C. 141.04(A)(4)), plus \$7,000 (R.C. 140.04(B)), \$5,000 (R.C. 141.04(C)), and, beginning on January 1, 1984, an additional \$5,000 (R.C. 141.04(D)). He shall also receive an amount of eighteen cents per capita for the population of the county in which he resided when elected or appointed, but not to be less than \$3,500 or exceed \$14,000 (R.C. 141.05).

It is clear that R.C. 141.04 and R.C. 1901.11 authorize common pleas and municipal judges to receive the same compensation increases in 1982, 1983, and 1984. An answer to your question turns, therefore, on a determination of the salaries to which these increases are added. As I noted above, when read together with R.C. 1901.11(F), the limit on compensation set forth in R.C. 1901.11(B) must be construed as limiting only the compensation paid pursuant to that division. Thus, the compensation paid a municipal judge pursuant to R.C. 1901.11(B) may not exceed the lesser of (1) \$3,000 less than the statutory compensation of a common pleas judge of the county in which the municipal court is located or (2) \$38,750.

There is no statutory definition of the term "statutory compensation" as used in R.C. 1901.11(B). The meaning attached to those words in common usage would, however, be "compensation provided by statute." See R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). One of my predecessors, considering an earlier version of this language, concluded that " 'the statutory compensation of a judge of the court of common pleas' is the compensation fixed by the General Assembly for the office," pursuant to G.C. 2251 and 2252 (predecessors to R.C. 141.04 and 141.05). 1951 Op. Atty Gen. No. 1016, p. 857 at 860. I concur in this conclusion. As noted above, R.C. 141.04 and 141.05 provide that a common pleas judge shall receive an annual salary of \$29,500, plus the increases mandated by R.C. 141.04(B), (C), and (D). He shall also receive an amount of eighteen cents per capita for the population of the county in which he resided when elected or appointed, but not to be less than \$3,500 or more than \$14,000. The limiting language of R.C. 1901.11(B) was adopted before the increases of R.C. 141.04(B), (C), and (D) were passed. Am. Sub. H.B. 694, 114th Gen. A. (1981); Am. Sub. H.B. 280, 112th Gen. A. (1978). However, nothing in R.C. 141.04, 141.05, or 1901.11 restricts that language to a particular portion of the

⁴R.C. 141.06 contains provisions for a common pleas judge in a county in which the probate court is combined with the court of common pleas to receive an additional \$7,000 per year. R.C. 141.07 provides for the payment of actual and necessary expenses of a common pleas judge who holds court in a county in which he does not reside, and also for the payment of per diem compensation and actual transportation expenses for a judge who is assigned to aid in disposing of business of a county other than that in which he resides. For purposes of this opinion, however, I am limiting my discussion to a common pleas judge who serves in a county in which the probate court is not combined with the court of common pleas and who does not hold court outside his county.

statutory salary of a common pleas judge. I conclude, therefore, that the words "statutory compensation," appearing in R.C. 1901.11(B), must be read to include all amounts of compensation to which a common pleas judge is entitled by R.C. 141.04 and 141.05.

Applying this definition of "statutory compensation," I find that the statutory compensation of a common pleas judge, as of January 1, 1983, ranges from \$45,000 to \$55,500.⁵ As a practical matter, then, an amount \$3,000 less than the statutory compensation of a common pleas judge will always exceed \$38,750, and the effective limitation of R.C. 1901.11(B) upon the salary of a municipal court judge will be the \$38,750 figure. The compensation increases provided by R.C. 1901.11(C), (D), and (E) will be added to the compensation authorized by R.C. 1901.11(B). As a result, the language of R.C. 1901.11(B) will not operate to restrict the total salary of a municipal judge to an amount \$3,000 less than that of a common pleas judge.

Whether a particular municipal judge will, in a given situation, make more money than a particular common pleas judge will depend upon the respective populations of the territory and county in which each resided when elected or appointed.⁶ It can be stated as a general rule, however, that if the territory and county have the same population, the municipal judge will not make more money than the common pleas judge. The base salary of the common pleas judge (\$29,500) is greater than that of a municipal judge (\$28,750). The common pleas judge will receive at least as great an amount as the municipal judge for population, since each receives eighteen cents per capita but the municipal judge has an effective upper limit of \$10,000 (the difference between the base salary of \$28,750 and the maximum of \$38,750 permitted by R.C. 1901.11(B)) whereas the common pleas judge will receive at least \$3,500 and may receive as much as \$14,000 (R.C. 141.05). As noted above, the compensation increases added for each in 1982, 1983, and 1984 are the same. Thus, where each comes from a territory or county with the same population, a municipal judge will not make more money than a common pleas judge.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 1901.11(F), the compensation increases for municipal judges provided in R.C. 1901.11(C), (D), and (E) are not subject to the limitation of R.C. 1901.11(B).
2. For purposes of R.C. 1901.11(B), the statutory compensation of a judge of the court of common pleas includes all amounts to which such a judge is entitled pursuant to R.C. 141.04 and 141.05.

⁵The compensation is computed as follows: \$29,500 (R.C. 141.04(A)(4)), plus \$7,000 (R.C. 140.04(B)), plus \$5,000 (R.C. 140.04(C)), plus an amount between \$3,500 and \$14,000 (R.C. 140.05). An additional \$5,000 will be added in 1984. R.C. 141.04(D).

⁶Because jurisdiction of a municipal court may include territory in more than one county, see R.C. 1901.02, it is theoretically possible that the population of the territory over which a municipal court has jurisdiction could exceed that of a county and that, as a result, a municipal judge could be paid more than a common pleas judge. For example, a common pleas judge from a county with a population of 50,000 would receive the following compensation for 1983: \$29,500 (R.C. 141.04(A)(4)), plus \$7,000 (R.C. 141.04(B)), plus \$5,000 (R.C. 141.04(C)), plus eighteen cents per capita for 50,000 people or \$9,000 (R.C. 141.05), for a total of \$50,500. A municipal judge from a territory with a population of 60,000 would receive the following compensation for 1983: \$38,750 (the maximum permitted by R.C. 1901.11(B); eighteen cents per capita for 60,000 totals \$10,800 which, when added to \$28,750, comes to \$39,550),

3. Whether a municipal judge makes more money than a common pleas judge depends upon the population of the territory or county in which each resided when elected or appointed.

plus \$7,000 (R.C. 1901.11(C)), plus \$5,000 (R.C. 1901.11(D)), for a total of \$50,750. I have not attempted to ascertain whether there are any differences in population between counties and municipal court territories which would permit such a result at the present time. I note, however, that I am aware of no legal basis for objection to such a result. The various municipal courts have been created by the General Assembly pursuant to its constitutional authority to establish courts inferior to the Supreme Court. Ohio Const. art. IV, §1. Ohio Const. art. IV, §6(B) provides that judges of the courts of common pleas, and of all courts of record established by law, shall receive "for their services such compensation as may be provided by law, which shall not be diminished during their term of office." Municipal courts are courts of record. R.C. 1901.02. No provision of the Ohio Constitution limits the compensation of municipal judges in relation to that of common pleas judges.