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1. MUNICIPAL COURT—JUDGE—COMPENSATION AFTER JANUARY 1, 1952—SECTION 1591 G. C.—SECTIONS 2251, 2252, G. C.—AS AMENDED BY AM. S. B. 14, 99 G. A. FOR OFFICE OF JUDGE OF COMMON PLEAS COURT OF COUNTY IN WHICH MUNICIPAL COURT SITUATED.
2. CLERK OF MUNICIPAL COURT—SALARY AFTER JANUARY 1, 1952—SECTIONS 1610, 2993, 2996-1 G. C.

SYLLABUS:

1. A judge of a municipal court, otherwise eligible to receive such under the provisions of Section 1591, General Code, may receive on and after January 1, 1952, compensation equal to that which is provided by Sections 2251 and 2252, General Code, as amended by Am. S. B. 14, 99th General Assembly, for the office of judge of the common pleas court of the county in which the municipal court is situated.

2. The clerk of a municipal court, otherwise eligible to receive such under the provisions of Section 1610, General Code, may receive on and after January 1, 1952, compensation equal to that which is provided by Section 2993, General Code, as amended by the 99th General Assembly and Section 2996-1, General Code, as enacted by the 99th General Assembly, for the office of clerk of courts of the county in which such municipal court is situated.

Columbus, Ohio, December 20, 1951

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your letter requesting my opinion as to the proper interpretation of certain portions of Sections 1591 and 1610, General Code, as enacted as a part of the new municipal court act, Amended Senate Bill No. 14, enacted by the 99th General Assembly. The specific questions you asked may be stated as follows:

1. May a judge of a municipal court, otherwise eligible to receive such, receive on and after January 1, 1952, compensation equal to that which is provided by Sections 2251 and 2252, General Code, as amended by the 99th General Assembly, for the office of Judge of the Court of Common Pleas of the county in which the municipal court is located, or is such municipal judge limited by Section 1591 to receiving not more than the actual

amount of compensation received during the same period of time by the person or persons occupying the office or offices of common pleas judge of such county.

2. May the clerk of a municipal court, otherwise eligible to receive such, receive on and after January 1, 1952, compensation equal to that which is provided by Section 2993, General Code, as amended by the 99th General Assembly, and Section 2996-1, General Code, as enacted by the 99th General Assembly, for the office of Clerk of Courts of the county in which such municipal court is located, or is such clerk of the municipal court limited by Section 1610, to receiving not more than the actual compensation received during the same period of time by the person occupying the office of clerk of courts of such county.

In Opinion No. 756, Opinions of the Attorney General for 1951, issued September 19, 1951, I held that incumbent municipal judges whose present terms of office do not expire until after the new municipal courts are instituted on January 1, 1952, will not be entitled on and after such date to an increase in salary during their existing terms because of the prohibition contained in Section 20, Article II of the Constitution. This would also be true as to clerks whose present terms of office will continue beyond December 31, 1951. In this opinion, therefore, my discussion must be considered as being limited to those officers assuming their terms of office on and after January 1, 1952 and whose compensation, therefore, is determined by the provisions of the new municipal court act.

I turn first to a consideration of the compensation of a municipal court judge. Such compensation is determined in accordance with the provisions of Section 1591, General Code, which in so far as pertinent to the question involved reads as follows:

“In territories having a population of not more than twenty thousand, judges shall receive as compensation an amount not less than two thousand dollars per annum, as the legislative authority shall prescribe, and the judge thereof shall be disqualified from the practice of law only as to matters pending or originating in said municipal court during his term of office. In territories having a population in excess of twenty thousand, judges shall be subject to section 1706 of the General Code and shall receive as compensation four thousand dollars per annum, plus an amount equal to three cents per capita for the first fifty thousand of the population of the territory; two cents per capita for the population of said territory in excess of fifty thousand and not in excess of one hundred thousand; one cent per capita for the population

of such territory in excess of one hundred thousand and not in excess of three hundred thousand; and one-half cent per capita for the population of such territory in excess of three hundred thousand, provided that the legislative authority may prescribe additional compensation not exceeding one thousand dollars. *In no case shall the compensation of any municipal judge exceed the statutory compensation of a judge of the court of common pleas of the county in which the municipal court is situated, nor shall compensation of a municipal judge exceed ten thousand five hundred dollars except the presiding judge of a municipal court shall receive an additional five hundred dollars and the chief justice of a municipal court shall receive an additional one thousand dollars.*" (Emphasis added.)

The 99th General Assembly, by amending Sections 2251 and 2252, General Code, increased the compensation of judges of the common pleas court. Section 2251 was amended, effective September 18, 1951, by Amended Substitute House Bill No. 288. In actual operative effect this amendment did not increase the salary of common pleas judges, since, under the previous statute as well as the present statute, the base salary of common pleas judges assuming office on and after September 20, 1947 is four thousand dollars. The actual increase of the salary of the common pleas judges was effected by the amendment of Section 2252 in Amended Substitute House Bill No. 332, effective September 14, 1951. This statute as amended materially increased the compensation of common pleas judges based upon the population of the county as ascertained by the latest Federal census.

In so far as the actual language of Section 2252 is concerned, there is no provision prohibiting incumbent common pleas judges from receiving the increase in salary as provided. However, such incumbent common pleas judges are precluded by operation of Section 14, Article IV of the Constitution, from receiving such increase in compensation "during their term of office."

What is "the statutory compensation of a judge of the court of common pleas in the county in which the municipal court is situated," within the purview of Section 1591? Is it the compensation as set forth in Sections 2251 and 2252, as determined by the Federal census of 1950, for such county, or is it the amount of compensation which an individual common pleas judge, because of the constitutional limitation, actually receives? It is my considered opinion that it is the former. In the case of

State, *ex rel. Glander v. Ferguson*, 148 Ohio St., 581, the Supreme Court in construing a similar constitutional provision, Section 20, Article II of the Constitution, held that the expression "his existing term" is personal, relates to the officer appointed and applies strictly to the term for which the officer is appointed and not to the term of office as designated by the General Assembly. I do not believe that the language of Section 14, Article IV "during their term of office" can be distinguished from the language of Section 20, Article II "during his existing term." The restriction being personal to the incumbent office holder it would appear that Section 14, Article IV, Constitution, has the effect of precluding an individual, because the change in compensation is during his personal term of office, from receiving the statutory compensation for the office fixed by the General Assembly. I conclude that "the statutory compensation of a judge of the court of common pleas" is the compensation fixed by the General Assembly for the office, even though the person occupying such office at a given time may be precluded by the Constitution from receiving such statutory compensation.

I turn now to a consideration of the salary of the municipal clerk of courts. Section 1610, paragraph C of the General Code provides that in territories having a population of less than one hundred thousand the clerk of a municipal court shall receive such annual compensation as the legislative authority may prescribe. Except for the Cincinnati municipal court the clerk in territories having a population of more than one hundred thousand is fixed "in a sum equal to eighty-five per cent of the salary of a judge of such court." This section then provides:

"A clerk's compensation shall not exceed that of the clerk of courts of the county in which the municipal court is located."

Here I am confronted with a much more difficult question. As contrasted with Section 1591, the word "statutory" does not appear and reference is made to "the clerk of courts" instead of to "a clerk of courts." On the theory that such a change in language is indicative of a legislative intent to treat in a different manner, it can be argued with some logic that the General Assembly intended that the municipal clerk in no event should ever receive compensation in excess of that received during the same period of time by the county clerk of courts. I am impelled, however, to conclude that such was not the intent of the General Assembly.

The fact that "a judge of the court of common pleas" was employed in Section 159I, while "the clerk of courts" was employed in Section 1610, is easily explained by the fact that no county has more than one clerk of courts while many counties have more than one common pleas judge. While the use of the language "the statutory compensation of the clerk of courts" might have been clearer than the language "that of the clerk of courts," I believe that a careful examination of the sentence will reveal that the two expressions have exactly the same meaning. Section 1610 is the statute which fixes the compensation of the clerks of the municipal court. The "annual compensation" of such clerks referred to in paragraph C of Section 1610, obviously has reference to what might be termed the "statutory compensation" of such clerks as contrasted with the right of any individual clerk to receive such statutory compensation if such had been increased by legislative action during his own term of office. This being true, it would appear that the "clerk's compensation," as used in the sentence in question, necessarily has reference to the "clerk's statutory compensation." It would follow, therefore, that the antecedent of the word "that" in the phrase "that of the clerk of courts of the county" is the comparable compensation of the municipal clerk, i.e. his statutory compensation.

It is a well recognized principle of statutory construction that where a statute is susceptible of two interpretations that one should be adopted which will most closely reflect the apparent purpose of the legislature as disclosed by the entire legislative act. No reason is apparent why one principle would be adopted in limiting the salaries of municipal judges and another principle adopted in limiting the salaries of clerks of the municipal court.

In conclusion it is my opinion and you are advised that :

1. A judge of a municipal court, otherwise eligible to receive such under the provisions of Section 159I, General Code, may receive on and after January 1, 1952, compensation equal to that which is provided by Sections 225I and 2252, General Code, as amended by the 99th General Assembly, for the office of judge of the common pleas court of the county in which the municipal court is situated.

2. The clerk of a municipal court, otherwise eligible to receive such under the provisions of Section 1610, General Code, may receive on and

after January 1, 1952, compensation equal to that which is provided by Section 2993, General Code, as amended by the 99th General Assembly and Section 2996-1, General Code, as enacted by the 99th General Assembly, for the office of clerk of courts of the county in which such municipal court is situated.

Respectfully,

C. WILLIAM O'NEILL
Attorney General