

OPINION NO. 90-023**Syllabus:**

1. For purposes of compensating a county sheriff, the phrase "annual compensation," as used in R.C. 325.06 and R.C. 325.18, means the amount of compensation fixed for one calendar year, i.e. the period of time from January 1 through December 31.
2. When a county sheriff's term of office pursuant to R.C. 311.01(A) includes only part of a particular calendar year, the sheriff is entitled to a prorated portion of the annual compensation fixed for that year pursuant to R.C. 325.06 and R.C. 325.18, which portion should be calculated to reflect the number of days in that calendar year which are included in the sheriff's term of office. (1980 Op. Att'y Gen. No. 80-054 and 1941 Op. Att'y Gen. No. 3955, p. 529 overruled).

To: Rocky A. Coss, Highland County Prosecuting Attorney, Hillsboro, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1990

I have before me your request for my opinion regarding the compensation of the county sheriff. Your letter includes the following background information. The sheriff was elected to a four year term in November of 1988. Pursuant to R.C. 311.01(A), he took office on the first Monday of January, 1989 (January 2) and his term will end on the first Monday of January, 1993 (January 4). The annual compensation of the sheriff is a specific amount determined from schedules and formulas set forth in R.C. 325.06 and R.C. 325.18, respectively. Rather than pay the sheriff the entire statutory amount fixed for the year 1989, the county auditor paid the sheriff for 364 days, because the term began on January, 2. The county auditor has stated that the sheriff "will receive the additional days salary in 1993." You specifically wish to know if this manner of payment is a correct interpretation of the words "annual compensation" with respect to the sheriff's salary.

Your question arises from the fact that, although the sheriff is elected to a term of four years, the years served do not correspond to calendar years, because R.C. 311.01(A) requires that the term begin and end on the first Monday of the years involved.¹ In the context of R.C. 311.01(A), therefore, the word "year" can only refer to the periods of time between the first Mondays of January throughout the term. See generally *State ex rel. Gareau v. Stillman*, 18 Ohio St. 2d 63, 65, 247 N.E.2d 461, 462 (1969) ("year" is a general word "susceptible of different meanings so far as the time within which the 365-day period should begin and end"); *Schon v. National Tea Co.*, 19 Ohio App. 2d 222, 250 N.E.2d 890 (Mahoning County 1969) (a year computed from the happening of an event ends on the anniversary date of the event); *Temple v. Liquor Control Comm'n*, 12 Ohio Misc. 38, 230 N.E.2d 457 (C.P. Franklin County 1965) (when a statute allows an issue to be put on the ballot only "once in each four years," year means the "political year" between elections, i.e. between "the first Tuesday after the first Monday of November" of each year, even though less than 365 days have passed during that time). R.C. 325.06 and R.C. 325.18 provide that the sheriff shall receive "annual compensation." If the words "annual compensation" refer to a year in office, as measured in R.C. 311.01(A) from the first Monday in January in one year to the first Monday in January in the next year (hereinafter, a "term year"), the calendar year is irrelevant to any calculation of the amount of compensation due.

In R.C. 325.06 and R.C. 325.18, however, the words "annual compensation" are used in conjunction with the words "calendar year." R.C. 325.06 states that "county sheriffs shall receive *annual compensation* in accordance with the following schedules:...." (Emphasis added). The statute then sets out five schedules for specific calendar years which prescribe salary amounts according to the population of the county. The schedule currently in effect is entitled "CLASSIFICATION AND COMPENSATION SCHEDULE FOR CALENDAR YEAR 1984 AND THEREAFTER." R.C. 325.06 (emphasis added). R.C. 325.18(A) provides for annual increases in subsequent calendar years, which build from the base figure prescribed by the 1984 schedule of R.C. 325.06 to the present. Thus, R.C. 325.18(A)(5) provides that the sheriff shall receive "[i]n *calendar year* 1989, the *annual compensation* determined under division (A)(4) of this section for *calendar year* 1988 increased by five per cent." (Emphasis added).

The words "calendar year" are commonly understood to designate the period from January 1 through December 31. *State ex rel. Gareau v. Stillman*, 18 Ohio St. 2d at 64, 247 N.E.2d at 462. Therefore, by use of the words "calendar year" in R.C. 325.06 and R.C. 325.18, the legislature has specified that the annual compensation of elected county officials is an amount fixed for actual calendar years rather than the more artificial "term years" created by R.C. 311.01(A). *Id.* at 65, 247 N.E.2d at 462 (legislative change from "general word 'year'" to "specific

¹ R.C. 311.01(A) states: "A sheriff shall be elected quadrennially in each county. He shall hold his office for a term of four years, beginning on the first Monday of January next after his election."

words "calendar year" indicates intent to adopt the common meaning of January 1 through December 31). See generally *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning"); *Dennison v. Dennison*, 165 Ohio St. 146, 149, 134 N.E.2d 574, 576 (1956) (every statutory amendment is presumed to have some purpose).

I am aware that previous opinions of the attorney general have reached the opposite result. In 1980 Op. Att'y Gen. No. 80-054, which you mention in your letter, my predecessor considered whether an elected county official was entitled to a proration of annual compensation for the part of the calendar year served at the end of his term. In 1941 Op. Att'y Gen. No. 3955, p. 529, another of my predecessors considered whether the annual compensation of the county clerk of courts should be reduced in proportion to the part of the calendar year not served before the commencement of her term. Both opinions concluded that an elected county officer serving a four year term was entitled to four complete annual salaries, without any proration, regardless of whether the number of days served in the term corresponded exactly to calendar years. Op. No. 80-054 (syllabus); 1941 Op. No. 3955 (syllabus).² In effect, therefore, these opinions held that annual compensation should be paid in reference to "term years." At that time, however, the statutes which fixed the annual compensation did not indicate the type of "year" that the word "annual" encompassed. The words "calendar year" did not appear in R.C. 325.06 until December of 1980, 1979-80 Ohio Laws, Part II, 4829 (Am. Sub. H.B. 1122, eff. Dec. 20, 1980),³ and R.C. 325.18 was not enacted until 1984, 1983-84 Ohio Laws, Part II, 4937 at 4954 (Am. Sub. H.B. 897, eff. Dec. 26, 1984). Thus, at the time my predecessors considered the meaning of the words "annual compensation," the monetary figure involved had neither an express nor implied connection to the calendar year.⁴ While my predecessors' conclusions were valid at the time, the legislature has rendered these opinions obsolete by adding the words "calendar year" to the compensation statutes. I, therefore, take this occasion to formally overrule both Op. No. 80-054 and 1941 Op. No. 3955.

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

1. For purposes of compensating a county sheriff, the phrase "annual compensation," as used in R.C. 325.06 and R.C. 325.18, means the amount of compensation fixed for one calendar year, i.e. the period of time from January 1 through December 31.
2. When a county sheriff's term of office pursuant to R.C. 311.01(A) includes only part of a particular calendar year, the sheriff is entitled to a prorated portion of the annual compensation fixed for that year pursuant to R.C. 325.06 and R.C. 325.18, which portion should be calculated to reflect the number of days in that calendar year which are included in the sheriff's term of office. (1980 Op. Att'y Gen. No. 80-054 and 1941 Op. Att'y Gen. No. 3955, p. 529 overruled).

² I note that no suggestion was or has been made that the officer should receive pay for days not included in the term of office. The issue presented, both in the cited opinions and by your question, is how to divide the days actually served into years for purposes of calculating the amount due to the sheriff. The 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.

³ 1980 Op. Att'y Gen. No. 80-054 was issued on September 11, 1980.

⁴ In-term increases in the amount of annual compensation were linked to county population and, thus, changed only with the census count. See, e.g., 1975-76 Ohio Laws, Part II, 2997 (Am. Sub. H.B. 784, eff. Dec. 6, 1976) (compensation scheme in effect at time of Op. No. 80-054).