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INCUMBENT CLERK OF MUNICIPAL COURT—SALARY
FIXED UNDER SECTION 325.08 R. C.—CANNOT BENEFIT BY
INCREASE EFFECTED BY SUBSEQUENT AMENDMENT OF
SECTION 325.08 R. C.

SYLLABUS:

The salary to which the incumbent clerk of the municipal court of Toledo is entitled under the provisions of Section 1901.31, Revised Code, during the remainder of his term which began on January 1, 1954, is the sum of \$7,500.00, being the amount fixed by Section 325.08, Revised Code, as then in force, for the salary of the clerk of the court of common pleas of Lucas County; and said clerk of said municipal court cannot under the provisions of Section 20, Article II of the Constitution, have the benefit of the increase effected by the subsequent amendment of said Section 325.08.

Columbus, Ohio, November 26, 1956

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo 2, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

"Section 1901.31 of the Ohio Revised Code, effective October 1, 1953, sets forth the duties and compensation of the Clerk of the Municipal Court. This section provides that in territories having a population of one hundred thousand or more, the clerk shall receive annual compensation in a sum equal to 85 per cent of the salary of a judge of such court; and that the compensation of said clerk shall not exceed that of the Clerk of Courts of the county in which the Municipal Court is located.

"The Clerk of the Municipal Court of the City of Toledo was elected in the fall of 1953 and took office January 1, 1954, for a six year term. Two judges were elected and began new terms on January 1, 1954 with increased compensation based upon the population of the city as determined by the 1950 Federal census. These two newly elected judges receive a base salary of \$8,518.08 in keeping with the population, plus an additional \$3,000.00 per annum as provided for by Ordinance of the Toledo City Council, as permitted by Section 1901.11 of the Revised Code of Ohio.

"Except for the Restrictive clause contained in Section 1901.31 the Clerk of the Municipal Court of Toledo would receive 85 per cent of \$11,518.08, or a salary of \$9,790.36. Prior to October 11, 1955, the annual salary of the Clerk of the Common Pleas Court of Lucas County, Ohio was \$7,500.00 and therefore under the limitation of the section cited above, the salary of the Municipal Court Clerk was restricted to that amount. The Ohio Legislature amended Section 325.08 of the Revised Code of Ohio, effective October 11, 1955, whereby the Clerk of the Common Pleas Court of Lucas County is now entitled to an annual salary of \$8,700.00.

"This office has received a request for an opinion as to whether or not the Clerk of the Municipal Court of Toledo, Ohio, would be entitled to the additional increase of salary after October 11, 1955, even though the Clerk of the Common Pleas Court of Lucas County, Ohio, would not be entitled to the additional compensation, due to the fact that Section 325.08 as amended, became effective during his term. It should be noted that the method of computing the salary of the Clerk of the Municipal Court of Toledo was enacted prior to the effective date of his term, and therefore the method of establishing an increase or decrease in his salary was fixed before he took office.

"Therefore, we would like your opinion as to whether or not the Clerk of the Municipal Court in Toledo would be entitled to an increase in salary from \$7,500.00 to \$8,700.00 per year, effective as of October 11, 1955, under the sections of the Revised Code of Ohio as set forth above."

I think it well to have before us at the outset the provision of the Constitution which confers on the General Assembly the right to fix

salaries of public officers, and erects a barrier as to the effect of a change. Section 20 of Article II reads as follows:

“The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

I accept your statement that the salary of the judges of the Toledo Municipal Court has been increased as the result of the 1950 Federal census. You state that it is now \$11,518.08.

Section 1901.31 Revised Code, effective October 1, 1953, in so far as pertinent reads as follows:

“(C) In territories * * * having a population of one hundred thousand or more, except in Cincinnati municipal court, the clerk shall receive annual compensation in a sum equal to eighty-five per cent of the salary of a judge of such court.
* * *

“The clerk’s compensation shall not exceed that of the clerk of courts of the county in which the municipal court is located.”

This would appear to give the clerk a salary equal to 85% of \$11,518.08, except for the restriction above noted.

On January 1, 1954, when the clerk of the municipal court entered upon his present term, the salary of the clerk of courts of the county as fixed by Section 325.08 Revised Code, was \$7,500.00. Thereafter, by amendment of that section effective October 11, 1955, the salary of the county clerk was increased to \$8,700.00. It appears to me quite clear that the salary pertinent to the office of clerk of the municipal court rose automatically to the same figure.

But did the county clerk then in office at once begin to enjoy this increase in the emolument pertaining to his office? A mere glance at the constitutional provision brings a negative answer; the reason being that the change was made “during his existing term.” What better right could the clerk of the municipal court have to take advantage of the change which was made “during *his* existing term?” As to both offices the increase in salary was brought about by the same legislative act. It was quite within the power of the legislature to hinge the salary of one of these offices on the other and to raise or lower such salaries at will. But the

constitution makes it very plain that "no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

I think we may avoid confusion if we realize that while the constitution speaks of the salary of an "officer," it is really the salary of the "office" which the legislature is authorized to fix and to change. Familiar examples are found throughout the statutes where the salary of an office held by several persons is increased and only those whose terms begin after the effective date of the act can have the benefit of the change.

It may be observed also that where the salary of one office is based or limited by the salary of another, the right of one holding or entering upon the former is not conditioned by the right of the particular person holding the latter. I call your attention to Opinion No. 1016, Opinions of the Attorney General for 1951, page 857, where it was held that the municipal court clerk's salary was not "tied in" to the salary received by an individual Common Pleas Court Clerk, who was unable during term to claim an increase, but was "tied in" to the maximum provided by law in the case of an individual whose term was such that Article II, Section 20, does not apply.

Thus, if the municipal court clerk's term had started after October 11, 1955, he could have received a salary of \$8,700.00 even though the *individual* Common Pleas Court Clerk of Lucas County could only receive \$7,500.00 during his then existing term.

In specific answer to the question which you have submitted, it is my opinion that the salary to which the incumbent clerk of the municipal court of Toledo is entitled under the provisions of Section 1901.31, Revised Code, during the remainder of his term which began on January 1, 1954, is the sum of \$7,500.00, being the amount fixed by Section 325.08 Revised Code, as then in force, for the salary of the clerk of the court of common pleas of Lucas County; and that the said clerk of said municipal court cannot, under the provisions of Section 20, Article II of the Constitution, have the benefit of the increase effected by the subsequent amendment of said Section 325.08.

Respectfully,

C. WILLIAM O'NEILL
Attorney General