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JUSTICES OF PEACE—NO REQUIREMENT IN SECTION 1907.47 RC SALARIES OF SEVERAL JUSTICES OF PEACE WITHIN SAME TOWNSHIP BE FIXED AT A UNIFORM AMOUNT.

SYLLABUS:

There is no requirement in Section 1907.47, Revised Code, that the salaries of the several justices of the peace within the same township be fixed at a uniform amount.

Columbus, Ohio, December 29, 1955

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

Dear Sir:

Your request for my opinion reads as follows:

“As you know, the new Justice of the Peace Code has created many difficult problems.

“The immediate and pressing problem is that of salary. You have already ruled that salaries within a county need not necessarily be identical so long as they are based on some reasonable classification. My present question deals with the authority of the Commissioners to fix different salaries for two or more justices in the same township.

“An example of a specific situation which has created this problem in Lucas County is as follows: S Township in Lucas County has three justices. Justice A maintains an office, lives adjacent to his office and is available on a 24 hour basis. In the past he had handled 80 or 90% of all the cases arising in S township. Justices B and C handle the remaining cases. Justice C is an attorney and village solicitor who has indicated that he is not interested in handling a large volume of cases or in receiving more than a nominal salary.

“In your opinion, would it be lawful for the Commissioners to fix different salaries for these three justices, the amount thereof to be based upon the relative volume of cases handled by them in previous years.”

In my opinion No. 5805, dated September 29, 1955, it was pointed out that when Amended Senate Bill No. 319 was under consideration in the 101st General Assembly it was at one time amended so as to provide

“a uniform” compensation for justices of the peace but this requirement was omitted in the final enactment of the measure. From this I concluded:

“* * * this action is indicative of a legislative intent that the board of county commissioners need not fix a salary which is to be paid uniformly to all justices concerned. The statute does not, of course, provide any criterion by which the board is to be guided in fixing variable amounts as salary for the justices concerned and it must, therefore, be concluded that the legislature intended them to exercise their discretion freely in the matter according to any reasonable rule of classification.”

In reaching this conclusion I was fully aware of the constitutional problem involved in the requirement of uniformity of operation of general laws but took the position that it was beyond the scope of my office to declare the statute invalid, and so interpreted the statute as to give effect to the evident legislative intent. In *State ex rel. Guilbert v. Yates*, 66 Ohio St., 546, the court held that a statute relating to the compensation of county officers was a law of a general nature to which the uniformity provision in the constitution was applicable.

In that case, however, it was observed by Davis, J., p. 553:

“* * * but it must be borne in mind that the uniformity in compensation which is required, is not uniformity in the total amount received, but uniformity in the rate of compensation, that is, that the same compensation shall be paid for the same service.
* * *”

In the case you describe there would appear to be an honest effort on the part of the board of county commissioners to fix salaries in relation to the service each officer is expected to render, and that action appears to be in harmony with the object of the limitation involved. In any event I do not see how it could be thought that either the constitution or the statute here involved would require uniformity within a township or district without requiring it throughout the county. I perceive no language in the statute requiring such uniformity within the township and so conclude that the board may properly proceed as outlined in your inquiry.

For these reasons it is my opinion that there is no requirement in Section 1907.47, Revised Code, that the salaries of the several justices of the peace within the same township be fixed at a uniform amount.

Respectfully,
C. WILLIAM O'NEILL
Attorney General