

OPINION NO. 87-021**Syllabus:**

In accordance with R.C. 305.171, the board of county commissioners may procure group life insurance for the county's common pleas judges, even where the amount of insurance coverage provided and the cost of providing such insurance are increased after the commencement of such judges' terms of office.

To: Joseph H. Niemeyer, Hancock County Prosecuting Attorney, Findlay, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 5, 1987

I have before me your opinion request in which you ask whether a judge of a court of common pleas may receive additional life insurance benefits paid for by the county in which the court is located where such additional benefits are provided after the commencement of the judge's term of office. A member of your staff has indicated that in the situation

about which you ask the county contemplates providing additional life insurance coverage for the common pleas judges at a cost which will exceed the amount formerly expended by the county for such judges' life insurance coverage. Your letter indicates that your concern is whether Ohio Const. art. II, §20 or art. IV, §6 prohibits the judges' receipt of such an increase in benefits.

Ohio Const. art. II, §20 states: "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." It is well settled that the prohibition against in-term increases in compensation under Ohio Const. art. II, §20 applies to elected county officers. State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976) (payments for health insurance premiums provided under R.C. 305.171 are compensation for purposes of art. II, §20 and, therefore, cannot be made after the commencement of the term for which a county official has been elected or appointed). Such prohibition does not, however, apply to common pleas judges. See State ex rel. Wallace v. City of Celina, 29 Ohio St. 2d 109, 279 N.E.2d 866 (1972) (stating that Ohio Const. art. IV, §6(B) relieves the judicial officers named therein from the prohibition set forth in art. II, §20). Rather, the constitutional provision prohibiting changes in compensation for common pleas judges is set forth in Ohio Const. art. IV, §6, which states in part:

(B) The judges of the supreme court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall, at stated times, receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office....Common pleas judges and judges of divisions thereof, and judges of all courts of record established by law shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States. (Emphasis added.)

The Court in State ex rel. Wallace v. City of Celina stated that: "Section 6(B) does not prohibit salary increases during term for the judicial officers therein enumerated." 29 Ohio St. 2d at 111, 279 N.E.2d at 868. Similarly, in MacDonald v. Bell, 23 Ohio App. 2d 249, 251, 262 N.E.2d 707, 708 (Columbiana County 1970), the court stated that judges of common pleas courts "are entitled to salary increases during their terms of office." It is clear, therefore, that common pleas judges are not prohibited by the Ohio Constitution from receiving in-term increases in compensation.

Pursuant to art. IV, §6(B), common pleas judges are entitled to such compensation as may be provided by law.¹

¹ The question whether a fringe benefit, such as the life insurance premium payments about which you ask, constitute "compensation" for purposes of Ohio Const. art. IV, §6 has not to my knowledge been addressed by any court. The court in State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692, 694 (1976) concluded,

1984 Op. Att'y Gen. No. 84-058, at 2-192, in considering whether common pleas judges may participate in a "pick up in lieu of salary increase" plan for retirement benefits, set forth the general scheme provided for the compensation of common pleas judges as follows:

The salary of common pleas court judges, excluding the costs of certain health care benefits paid by a governmental entity on behalf of such judges, is fixed by the General Assembly and paid from the state treasury pursuant to R.C. 141.04 and R.C. 141.06. Judges of courts of common pleas are entitled to additional compensation, set by statute, which is payable from the county treasury. R.C. 141.05; R.C. 141.07. There is no statutory authority for a common pleas court judge to participate in a pick up program. I draw your attention to Ohio Const. art. IV, §6(B), which provides in part: "Common pleas judges and judges of divisions thereof...shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites..." In addition, R.C. 141.13 reads: "No fees in addition to the salaries and compensation named in sections 141.02 to 141.12, inclusive, of the Revised Code, shall be allowed to any such officer...The salaries provided in such sections shall be in full compensation for any services rendered by such officers and employees, payment of which is made from the state treasury." Thus, common pleas court judges are prohibited from receiving any fringe benefits not provided by statute. See Op. No. 83-042. See also 1982 Op. Att'y Gen. No. 82-022. (Emphasis added.)

It is, therefore, necessary to determine whether the payment of life insurance premiums by the county for common pleas judges is a form of compensation authorized by statute.

however, that, for purposes of Ohio Const. art. II, §20, payments for health insurance premiums are "fringe benefits" which "are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check." Thus, the court appears to have included "perquisites" as a component of compensation. Although Ohio Const. art. IV, §6(B) prohibits judges from receiving "perquisites," I believe that if a particular fringe benefit is provided for by statute, it must be included as compensation provided by law to which judges are entitled under art. IV, §6(B). See generally City of Kettering v. Berger, 4 Ohio App. 3d 254, 259, 448 N.E.2d 458, 463-64 (Montgomery County 1982) ("[a]ll of the definitions of the term 'perquisite' contemplate a profit to be secured by the officer out of the office he occupies, in addition to his fixed compensation. A 'perquisite' is something gained from a place of employment over and above the ordinary salary or fixed wages for services rendered, especially a fee allowed by law to an officer for a specific service"); 1982 Op. Att'y Gen. No. 82-022 at 2-68 ("any personal profit obtained by a probate court judge from the sale of marriage certificates by court personnel during regular working hours on court premises is a perquisite which is prohibited by Ohio Const. art. IV, §6").

Although the salary and compensation of judicial officers is provided for, as set forth above, primarily in R.C. Chapter 141, the chapter does not expressly authorize the counties to provide life insurance benefits for common pleas judges. A member of your staff, however, has raised the question whether the county may provide such benefit under R.C. 305.171, which states in pertinent part:

(A) The board of county commissioners of any county may contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits including, but not limited to hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, group legal services, or group life insurance, or a combination of any of the foregoing types of insurance or coverage for county officers and employees and their immediate dependents from the funds or budgets from which said officers or employees are compensated for services, issued by an insurance company, a hospital service association organized under Chapter 1739. of the Revised Code, a medical care corporation organized under Chapter 1737. of the Revised Code, a dental care corporation organized under Chapter 1740. of the Revised Code, or a hospital service association in conjunction with an insurance company duly authorized to do business in this state. (Emphasis added.)

Since R.C. 305.171 authorizes the board of county commissioners to provide group life insurance for county officers, the question arises as to whether common pleas judges may be included within the term "county officers" for purposes of that statute. In the case of State ex rel. Hess v. Rafferty, 5 Ohio App. 463 (Henry County 1916), the court considered, in part, whether a common pleas judge is a state or county officer for purposes of compensation and stated:

Many, if not all, county officers are required by law to perform duties in carrying forward purely state purposes, and at the same time are required to perform services which are confined to the county and for the benefit of the county alone, and yet it has never been doubted but that the county may be required to levy taxes to provide for the compensation of such officers.

....
...[I]t is not the nature of the office held, but the character of the services performed and the resultant benefit, that is to determine whether the legislature may provide for compensation to be paid by levy of taxes upon the county.

....
A large part of the services performed by a judge of the court of common pleas has to do with litigation affecting the people and public agencies of the county alone, and an examination of the statutes discloses that, in addition to purely judicial functions to be performed by a common pleas judge, he is required, among other things, to [perform various other duties, which] are solely for the benefit of the county or the people residing therein.

5 Ohio App. at 467-68. The court then concluded that G.C. 2252 (now R.C. 141.05), providing for additional compensation to be paid to common pleas judges from the county treasury, was not in conflict with any express provision of the Ohio Constitution. Admittedly, the question of whether a common pleas judge may be classified as a state or county officer is not well settled and appears to depend upon the purpose for which such classification is being made. See generally 1985 Op. Att'y Gen. No. 85-014 (discussing the instances in which a common pleas judge has been classified as a state officer). For purposes of R.C. 305.171, however, which authorizes the board of county commissioners to provide group life insurance policies for county officers "from the funds or budgets from which said officers...are compensated for services," the fact that the county does furnish a portion of common pleas judges' compensation, R.C. 141.05, and based upon the reasoning of the court in Rafferty, I readily conclude that, for purposes of R.C. 305.171, a common pleas judge is a county officer. See Op. No. 85-014 (concluding that a common pleas judge is a county officer for purposes of representation by the county prosecuting attorney under R.C. 309.09(A)).

I note, however, that R.C. 141.04 which specifies the annual salary of, among others, common pleas judges, states in division (H): "As used in this section, 'salary' does not include any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination thereof, covering...a judge named in this section and paid on his behalf by a governmental entity." Similarly, R.C. 141.05 which prescribes additional compensation for common pleas judges to be paid from the county treasury excludes those items listed in R.C. 141.04(H) from the term "compensation," as used in R.C. 141.05. These two provisions indicate the General Assembly's recognition that insurance benefits may be provided for such judges by a governmental entity. It may appear that, by listing the specific types of insurance which are to be excluded from the compensation prescribed by R.C. 141.04 and R.C. 141.05, the legislature intended that only those types of insurance benefits listed in R.C. 141.04(H) and R.C. 141.05 may be provided for the judges to whom those statutes apply. These exclusions, however, appear to have been added to R.C. 141.04 and R.C. 141.05, see 1977-1978 Ohio Laws, Part II, 2298 (Am. Sub. H.B. 280, eff. April 24, 1978), merely to clarify that the cost of any such benefits was not to be deducted from the salary and additional compensation prescribed by such statutes. I conclude, therefore, that, pursuant to R.C. 305.171, the board of county commissioners may contract, purchase, or otherwise procure and pay all or part of the cost of group life insurance for common pleas judges of the county from the funds or budgets from which such judges are compensated for services.

In specific answer to your question, it is my opinion, and you are hereby advised that, in accordance with R.C. 305.171, the board of county commissioners may procure group life insurance for the county's common pleas judges, even where the amount of insurance coverage provided and the cost of providing such insurance are increased after the commencement of such judges' terms of office.