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MUNICIPAL COURT—INCREASE IN POPULATION OF TERRITORY IN JURISDICTION, H. B. 305, 102<sup>nd</sup> GENERAL ASSEMBLY, CANNOT CHANGE COMPENSATION OF JUDGES DURING TERM FOR WHICH ELECTED—ART. II, SEC. 20, OHIO CONSTITUTION—SECTION 1901.11 RC.

## SYLLABUS:

The increase in the population of the territories under the jurisdiction of certain municipal courts brought about by the enactment of House Bill No. 305, 102<sup>nd</sup> General Assembly, which enlarged the area of such territories, cannot have the effect, by reason of the provisions of Section 20, Article II, Ohio Constitution, of providing for an increase under the formula prescribed in Section 1901.11, Revised Code, in the compensation of any judge of any such court during his existing term.

Columbus, Ohio, September 20, 1957

Hon. John S. Ballard, Prosecuting Attorney  
Summit County, Akron, Ohio

Dear Sir:

Before me is your letter which reads as follows:

“House Bill No. 305 enacted during the 1957 term of the General Assembly and effective June 17, 1957, provides for the addition of certain townships and villages to the jurisdiction of the municipal courts of Akron, Barberton, and Cuyahoga Falls. Revised Code Section 1901.11 provides that salaries shall be paid to municipal judges based upon the population of the territory within the jurisdiction of the court.

“It was obviously the intent of the Legislature that municipal court judges be paid a salary commensurate with the volume of work based upon population. However, since the territorial jurisdiction of the Akron, Barberton, and Cuyahoga Falls courts has been increased between census periods and during the term of office of the present judges of the above-mentioned courts, there appears to be a question as to whether or not the municipal judges may be entitled to a salary increase at this time, based upon the population increase or whether such an increase at this time would be a salary increase within the constitutional prohibition against salary increases during existing terms.

“I therefore, respectfully request your opinion in answer to the following question: Are the judges of the municipal courts of Akron, Barberton, and Cuyahoga Falls, legally entitled to a salary increase during their existing terms of office, based upon the increase in population of the territory within the jurisdiction of the courts?”

The pertinent provisions of Section 1901.02, Revised Code, as amended by House Bill 305, 102nd General Assembly, are as follows:

“\* \* \* The Akron municipal court has jurisdiction within Bath, Northhampton, Richfield and Springfield townships and within the corporate limits of the municipality of Lakemore and within the portion of the municipality of Mogadore in Summit County.

“\* \* \* The Barberton municipal court has jurisdiction within Copley, Coventry, Franklin, Green, and Norton townships, and within the corporate limits of the municipality of Clinton.

“\* \* \*

“The Cuyahoga Falls municipal court has jurisdiction within Boston, Hudson, Macedonia, Northfield, Sagamore Hills, and Twinsburg townships and within the corporate limits of the municipalities of Boston Heights, Hudson, Monroe Falls, Northfield, Peninsula, Remindersville, Silver Lake, Stone, Tallmadge, and Twinsburg, in Summit County. \* \* \*”

It is clear that as a direct consequence of the increase in area of the jurisdiction of the above mentioned municipal courts, the population under their jurisdiction was also substantially increased.

In order to determine the relationship between the compensation of municipal court judges and the population of the territories under their jurisdiction, we may note Section 1901.11, Revised Code, which reads in part as follows:

“In territories having a population of not more than twenty thousand, judges shall receive as compensation not less than two thousand dollars per annum, as the legislative authority prescribes \* \* \*. In territories having a population of more than twenty thousand, judges \* \* \* 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 of more than fifty thousand and not more than one hundred thousand; one cent per capita for the population of such territory of more than one hundred thousand and not more than three hundred thousand; and one-half cent per capita for the population of such territory of more than three hundred thousand, but the legislative authority may prescribe additional compensation of not more than three thousand dollars. \* \* \* *Population is determined by the latest decennial federal census.*” (Emphasis added.)

At this juncture it would appear that the population, determined by the 1950 Federal census of the additional townships and villages under the jurisdiction of the municipal courts in question should constitute a basis for a re-valuation of the salaries of the above mentioned municipal court judges, inasmuch as the 1950 census was obviously the latest one.

However, it is necessary to also examine the provisions of the Ohio Constitution in regard to the compensation of municipal court judges to determine the ultimate answer to the question at hand.

Article IV, Section 14 of the Ohio Constitution reads as follows:

“The judges of the Supreme Court, and of the court of common pleas, shall, at stated times, receive for their services, such compensation as may be provided by law, *which shall not be diminished or increased during their term of office.*”

(Emphasis added.)

Article II, Section 20, Ohio Constitution, provides:

“The general assembly, in cases not provided for in the 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.*”

(Emphasis added.)

Although municipal court judges fall under the scope of Article II, Section 20, rather than Article IV, Section 14, of the Ohio Constitution, they are mentioned together, inasmuch as the underlying reasons and meanings for the existence of both are similar on the basis that only the jurisdiction of the judges alluded to are different.

In State, *ex rel* Holmes v. Thatcher, 116 Ohio St., 113, the Supreme Court of Ohio held that where a municipal court judge has been elected to office and was in the discharge of his duties as such *prior* to the time that the city council had validly passed a resolution increasing the salaries of all municipal court judges of the city by a certain amount, such judge should be denied the increase in salary since it otherwise would be in violation of Section 20, Article II, Ohio Constitution. With this case in mind, the legal question is narrowed down to whether Section 20, Article II, would be violated by an increase in the salaries of the three municipal court judges in question, based on the population in the additional areas of their jurisdiction during their terms of office.

To provide more insight on this question, your attention is invited to The State, *ex rel.* Mack, Judge v. Guckenberger, Auditor, 139 Ohio St., 273. Part of Judge Hart's opinion is quoted below:

“The purpose of the constitutional inhibition now under consideration, (Section 14 of Article IV of the Constitution) is to make sure that the *judge and electorate are advised before he is appointed or elected what his compensation will be, with the assurance that it cannot be changed by the Legislature during the term*; that the judge is precluded from using his personal influence or official action to have the legislature increase his salary; at the same time he is protected against the legislature and the people from decreasing his compensation after his term begins.”

(Emphasis added.)

Concerning the facts of the case at hand, the three municipal judges in question were all either appointed or elected and were in the discharge of their duties *prior* to the effective date of House Bill No. 305 which increased the area under their jurisdiction. At the time these judges took office, both they and the electorate were advised as to their exact compensation, inasmuch as it was based on the 1950 Federal population census of their territorial jurisdiction at the time they took office, and such compensation could have been subject to only one variable during their terms of office, namely, either an increase or decrease due to a change of population in their territorial jurisdictions based on the 1960 Federal population census. This, of course, would be immaterial, inasmuch as their terms end before 1960. If the legislative intent was to increase the salaries of the judges in question during their terms of office by House Bill 305, it would in effect be depriving the electorate of its right to know before such judges were appointed or elected what their compensation would be during their respective terms of office.

On the other hand, suppose that the legislature had passed a bill after the judges in question had taken office which decreased the territory under their jurisdiction to one-tenth of its original area, it could be argued on the same reasoning that their compensation would be decreased accordingly during their term of office. But if this were so, the judges would not be protected against the legislature and the people from decreasing their compensation during their terms of office as contemplated by the framers of the Constitution.

In regard to a public officer having additional duties thrust upon him by the legislature after he has taken office, without additional compensation therefor, your attention is invited to the *per curiam* opinion in *Donahey v. State, ex rel. Marshall*, 101 Ohio St., 473, in which, at pages 476 and 477, it is stated:

“\* \* \* It is a familiar rule that when a public officer takes office he undertakes to perform all of its duties, although some of them may be called into activity for the first time by legislation passed after he enters upon his term.”

As said by Bradbury, J., in *Strawn v. Commissioners of Columbiana*, 47 Ohio St., 404, at page 408:

“The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for

its performance, for the legislature may deem the duties imposed to be fully compensated by the privileges and other emoluments belonging to the office.”

Predicated on the afore-stated reasons, it is my opinion that the increase in the population of the territories under the jurisdiction of certain municipal courts brought about by the enactment of House Bill No. 305, 102nd General Assembly, which enlarged the area of such territories, cannot have the effect, by reason of the provisions of Section 20, Article II, Ohio Constitution, of providing for an increase under the formula prescribed in Section 1901.11, Revised Code, in the compensation of any judge of any such court during his existing term.

Respectfully,  
WILLIAM SAXBE  
Attorney General