

March 11, 2016

The Honorable Kevin A. Rings  
Washington County Prosecuting Attorney  
205 Putnam Street  
Marietta, Ohio 45750

SYLLABUS:

2016-008

1. For the purpose of Article II, § 20 of the Ohio Constitution, the phrase “term of office” means the period for which a person is appointed or elected to a public office.
2. A person appointed to a vacancy in a county office that has been vacated due to the death, resignation, or retirement of the previous officeholder commences a new term of office for the purpose of Article II, § 20 of the Ohio Constitution and shall receive the rate of compensation for that office that is in effect at the time he commences his service in office.
3. A person appointed to a vacancy in a county office whose resignation or retirement from that office created the vacancy does not upon his appointment commence a new term of office for the purpose of Article II, § 20 of the Ohio Constitution and shall not receive an increase in the compensation for that office that was authorized or enacted after the commencement of his original term of office.
4. Elected county officers, including a county treasurer and county commissioners, who are elected in November 2016 to a term of office that begins after January 1, 2017, shall receive for the time they serve a prorated portion of the annual compensation fixed for their county’s population class for calendar year 2017 by R.C. 325.03-.15, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015). The prorated portion is to be calculated by multiplying the applicable daily rate of pay by the number of days the official actually serves in the term of office that begins in 2017.

5. A county sheriff shall receive in his furtherance of justice fund, pursuant to R.C. 325.071, an amount equal to half of the annual salary allowed by R.C. 325.06(A), regardless of the amount of annual salary the sheriff actually receives.



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section  
Office 614-752-6417  
Fax 614-466-0013

30 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215  
[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

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OPINION NO. 2016-008

The Honorable Kevin A. Rings  
Washington County Prosecuting Attorney  
205 Putnam Street  
Marietta, Ohio 45750

Dear Prosecutor Rings:

The General Assembly recently enacted legislation that amends the salary schedules in R.C. 325.03-.15 for the purpose of increasing the annual compensation of county officeholders. Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015). This has prompted you to ask several questions related to the Ohio constitutional prohibition on in-term changes in compensation:

1. Whether the prohibition against in-term changes in compensation in Article II, § 20 of the Ohio Constitution applies to a person appointed by a county central committee under R.C. 305.02(E) to a vacancy in a county office.
2. Whether a county treasurer and a county commissioner who take office after January 1, 2017, shall receive the full amount or a prorated amount of their annual statutory compensation.
3. Whether the amount of a county sheriff's furtherance of justice fund authorized by R.C. 325.071 will increase and be available to the county sheriff in 2016 even though Article II, § 20 of the Ohio Constitution will prohibit paying to the county sheriff in 2016 the higher salary authorized

by R.C. 325.06, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015).<sup>1</sup>

**Question One: The Meaning of the Phrase “Term of Office” in Article II, § 20 of the Ohio Constitution**

You first ask whether the prohibition against in-term changes in compensation in Article II, § 20 of the Ohio Constitution applies to a person appointed by a county central committee under R.C. 305.02(E) to a vacancy in a county office. Specifically, you wish to know whether a person appointed to a vacancy in a county elected office due to the death, resignation, or retirement of the incumbent officeholder thereby commences a new term of office, and if so, whether the appointee may receive an increase in compensation that was enacted prior to his appointment but after the commencement of the term of office of his predecessor. *See generally* 1983 Op. Att’y Gen. No. 83-015 (addressing a similar question concerning a township trustee).

R.C. 305.02 addresses the appointment of a person to fill a vacancy in a county office. *See* 2015 Op. Att’y Gen. No. 2015-038. R.C. 305.02(E) provides that persons appointed and certified to fill vacancies in county offices pursuant to R.C. 305.02 “shall be entitled to all remuneration provided by law for the offices to which they are appointed.” Article II, § 20 of the Ohio Constitution declares that “[t]he 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.” (Emphasis added.) This provision prohibits any change, whether an increase or decrease, in a public officer’s compensation during his existing term of office.<sup>2</sup> 2013 Op. Att’y Gen. No. 2013-016, at 2-143 to 2-144; 2003 Op. Att’y Gen. No. 2003-027, at 2-226.

To answer your question we consider the meaning of the phrase “term of office” as understood by Article II, § 20. This phrase is not defined in the Ohio Constitution. Decisions of the Ohio courts and various Attorney General opinions have considered its meaning in the

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<sup>1</sup> You also have asked about the amount of the allocation to a county prosecuting attorney’s furtherance of justice fund in 2016. We answered that question in 2015 Op. Att’y Gen. No. 2015-037, which was issued to the Stark County Prosecuting Attorney.

<sup>2</sup> Because of this prohibition, current county officers who are mid-term will not receive in 2016 the salary increase enacted in Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015). We understand mid-term county officers to be those persons who are serving a term of office that ends in January 2017. These officeholders generally were elected in November 2012 and commenced their current term of office in January 2013. An exception to these dates exists for county treasurers, who begin their terms on the first Monday in September following their election. R.C. 321.01.

context of questions similar to yours. These authorities widely find that the phrase “term of office” attaches to the person who is holding office, not the length of time established by law for a single “term” for a particular public office. We turn to a review of these precedents and a discussion of how they apply to your question.

In 1947, the Ohio Supreme Court held that:

[t]he inhibition against change of salary of a public officer in Section 20, Article II of the Constitution of Ohio, does not apply to a person appointed to a partially expired statutory term, where the salary of the office is increased by statute effective during the preceding portion of such term and during the time such person was holding over in the office under his appointment thereto for the preceding statutory term.

*State ex rel. Glander v. Ferguson*, 148 Ohio St. 581, 76 N.E.2d 373 (1947) (syllabus, paragraph 2). The court thus decided that an officeholder’s term of office may not be the same as the term established by law for the office he holds.

Although *Glander* involved an officer who was holding over his statutory term, during which time an increase was passed, and who was then appointed to succeed himself for the unexpired term, a number of opinions have applied *Glander*, or the reasoning therein, ... and have uniformly concluded that an officer who is appointed or elected to fill a vacancy for an unexpired term is entitled to receive an increase in compensation which was enacted before his appointment or election, but after the commencement of the term to which he succeeds.

1983 Op. Att’y Gen. No. 83-015, at 2-61. *See, e.g.*, 1969 Op. Att’y Gen. No. 69-149 (a person appointed to serve until the next general election following the resignation of a judge of a municipal court, and a person who is elected at such election to serve for the remainder of the unexpired term, are entitled to a salary increase, when such increase is authorized during the existing term of a judge who has resigned, but prior to the appointment or election of his successor to serve for the remainder of the unexpired term); 1960 Op. Att’y Gen. No. 1644, p. 566 (county officials who were elected or appointed to office prior to April 1, 1960, should be paid salaries based on the population of their respective counties as shown by the 1950 federal census; however, such an official elected or appointed on or after April 1, 1960, should be paid a salary based on the population of his respective county as shown by the 1960 federal census, effective April 1, 1960); 1952 Op. Att’y Gen. No. 1133, p. 117 (a county clerk of courts elected in November 1950, to fill out the unexpired term of a clerk who had been elected in 1948, but resigned in 1949, is entitled during his term to receive the compensation provided by the General Code, as it was in force at the time of his election, based on the federal census of 1950); 1951 Op. Att’y Gen. No. 857, p. 642 (a county recorder appointed on October 1, 1951, to fill a vacancy in that office, may lawfully receive the salary provided for such office under the provisions of the General Code as it was amended effective September 8, 1951).

It is clear that Ohio has taken the position that one who fills a vacancy is entitled to an increase in salary authorized after the beginning of the original term to which he succeeds but before his appointment to fill the vacancy, because *the restriction on an increase in salary during term is personal to the incumbent of the office*, and does not apply to his successor, except when the statute granting the increase specifically applies to a term of office as distinguished from the incumbent of the office. The same must also be true in regard to one who is elected to fill an unexpired term under these circumstances.

1969 Op. Att’y Gen. No. 69-149, at 2-324 (emphasis added). Thus, the principle has been long established that a person appointed to serve an unexpired term of a public office is entitled to the rate of compensation in effect at the time he commences his term of office, rather than the rate of compensation in effect at the time that the incumbent officeholder (*i.e.*, the appointee’s predecessor) commenced his term of office. 1983 Op. Att’y Gen. No. 83-015, at 2-61. The reasoning behind this is that the “term of office,” for the purpose of the constitutional prohibition, follows the officeholder, and does not mean the statutory length of time of a single “term” for a particular public office. *See generally* 1998 Op. Att’y Gen. No. 98-024, at 2-130 (considering the phrase “new term of office” for purposes of R.C. 325.11 and concluding that it “appears to refer to the period for which an individual is appointed or elected, and not to the statutory term of the office”).<sup>3</sup>

This brings us to an important distinction. While an appointee to a vacancy in a public office is entitled to the rate of compensation in effect at the time he commences his term of office, rather than the rate of compensation in effect at the time that his predecessor began his service in office, this is true only *if* the appointee and the incumbent officeholder are not the same person. In other words, an officeholder may not receive an increase in compensation that became effective during his term of office if he resigns and is reappointed to that same office. *See* 2001 Op. Att’y Gen. No. 2001-038 (syllabus, paragraph 2) (“members of a county veterans service commission, who are serving at the time the compensation for such position is increased by the board of county commissioners, may not receive such increase by resigning and being reappointed to the commission by a judge of the common pleas court. They may receive such increase upon their reappointment to the commission only after the expiration of the term they were serving when the increase was adopted”).<sup>4</sup> When a person appointed to a vacancy in a

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<sup>3</sup> We recently considered the meaning of the phrase “term of office” for purposes of a prosecuting attorney’s election under R.C. 325.11 to engage or not to engage in the private practice of law in 2015 Op. Att’y Gen. No. 2015-026. We reiterated the reasoning set forth in 1998 Op. Att’y Gen. No. 98-024 and advised that the phrase “new term of office” attaches to the person serving in the office and thus does not denote the statutory time period for the office.

<sup>4</sup> 2001 Op. Att’y Gen. No. 2001-038, at 2-228 to 2-229, set forth several factual examples:

public office is the same person who held the office prior to it being vacated (*e.g.*, by the officeholder's resignation or retirement), that person continues in his original term of office and therefore may not receive an increase in salary that was authorized after the commencement of his original term. Stated differently, when an office is vacated and then filled by appointment, there is no "new term of office" when the appointee is the person who held the office at the time it was vacated. *See City of Parma Heights v. Schroeder*, 93 Ohio L. Abs. 247, 196 N.E.2d 813, 816 (1963) ("[p]art of the terms of the [officers] had two years to run. If they had resigned and

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1980 Op. Att'y Gen. No. 80-048 addressed a similar issue. Two cities and a general health district had contracted in 1962 to form a combined health district which was governed by a board of seven members serving seven-year terms. A new contract was executed in March 1980, changing the terms from seven years to five years. The board members serving under the prior agreement were reappointed under the new contract, but for terms that were one year less than the number of years remaining in their original terms under the prior agreement. In 1979, the General Assembly had increased the compensation of health board members, and the board members of the combined general health district asked whether their new contract entitled them to that increase in compensation. The opinion concluded that the board members were not beginning new terms, but were continuing to serve out their old terms, although slightly shortened, and that payment of any increase in compensation for the members during the remainder of their original terms under the first contract would not be permitted pursuant to Ohio Const. art. II, § 20. Citing *City of Parma Heights v. Schroeder*, the opinion advises that, "one must confront the realities of the situation and, as in many other areas of the law, substance must triumph over form." [1980 Op. Att'y Gen. No. 80-048,] at 2-200 to 2-201.

A similar matter was also addressed in 1979 Op. Att'y Gen. No. 79-114, where an ordinance increasing the compensation for certain city offices was passed on December 18, 1979, but did not become effective until mid-January of 1980. The question arose whether a municipal officer who was serving at the time the ordinance was adopted, and who had been successfully re-elected to another term, which began on January 1, 1980, could delay the commencement of his second term until after the effective date of the pay increase so as to receive the higher salary. (R.C. 731.07 prohibits an officer of a noncharter city from receiving an increase in salary during the term for which he was elected or appointed.) The opinion noted that the date on which the officer's term of office began was set by statute, and, again citing *City of Parma Heights v. Schroeder*, concluded that the municipal officer could not change the time of commencement or duration of his term and thus receive an increase in compensation that became effective after that time. [1979 Op. Att'y Gen. No. 79-114,] at 2-385 to 2-386.

retired the law would say that their terms of office had come to an end. But such was not the case, for they immediately stepped back into the shoes they had been occupying before. [The officers] were elected to serve until the end of 1963. That was the length of their term and, as legislators in a body that had raised salaries during their term, they cannot change their status by two words, ‘I resign,’ and thereby resume their former places in council at the increased salary. Clearly one cannot do indirectly what he cannot lawfully do directly”).

The foregoing concepts hold true regardless of the reason for the vacancy in the office that leads to an appointment pursuant to R.C. 305.02(E). That is, when a person is appointed to a county office that has been vacated due to the death, resignation, or retirement of the previous officeholder, the appointee shall receive the rate of compensation in effect at the time he commences his service in office, rather than the rate of compensation in effect at the time that his immediate predecessor commenced his service in office. At the same time, a person appointed to a county office from which he resigned or retired mid-term may not receive an increase in compensation that became effective during his original term of office and prior to his resignation or retirement.

Additionally, the analysis above applies with equal force regardless of how a person is appointed to fill a vacancy in a county office. In 1998 Op. Att’y Gen. No. 98-024, the facts concerned an individual appointed pursuant to R.C. 305.02(B). 2015 Op. Att’y Gen. No. 2015-026 discussed a person appointed pursuant to R.C. 305.02(F). The analysis in these opinions makes no distinction regarding how a person was appointed. *See generally* 2015 Op. Att’y Gen. No. 2015-026, slip op. at 3.

Based on the reasoning set forth above, we conclude that, for purposes of Article II, § 20 of the Ohio Constitution, the phrase “term of office” refers to the period for which a person is appointed or elected and not to the statutory term of the office. When the person appointed to a vacancy in a county office is the same person who held the office prior to it being vacated, that person continues in his original term of office and may not receive an increase in salary that was authorized after the beginning of his original term of office.

### **Question Two: Prorating Annual Salaries for Elected County Officeholders**

You next ask whether a county treasurer and a county commissioner who take office after January 1, 2017, shall receive the full amount or a prorated amount of their annual statutory compensation.<sup>5</sup> A county treasurer is elected quadrennially in November and serves a four-year term beginning on the first Monday of September after his election. R.C. 321.01. County commissioners are elected quadrennially in November and serve a four-year term beginning on

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<sup>5</sup> “Prorate” means “to divide, distribute, or assess proportionately ... to make a pro rata distribution” and “pro rata” means “proportionately according to an exactly calculable factor[.]” *Merriam-Webster’s Collegiate Dictionary* 997 (11th ed. 2007).



the first, second, or third day of January following their election. R.C. 305.01. Compensation for county treasurers and county commissioners is authorized by R.C. 325.01 and provided for by R.C. 325.04 and R.C. 325.10, respectively. R.C. 325.04 and R.C. 325.10 establish classification and compensation schedules for county treasurers and commissioners that group counties into classes based on population size and assign an “annual compensation” amount to each class for each listed calendar year.

While the salaries of county treasurers and county commissioners are set as an annual rate, county officers and employees are paid on a biweekly basis. R.C. 325.01; R.C. 325.17. And, although an officeholder’s compensation is fixed by statute as an annual rate and paid biweekly to the officeholder, it is earned by the officer on a daily basis. 2002 Op. Att’y Gen. No. 2002-006 considered a question nearly identical to yours and applied the reasoning of a 1990 opinion. 1990 Op. Att’y Gen. No. 90-023 addressed the proper method for determining the compensation of a county sheriff whose term began on January 2, 1989, and ended on January 4, 1993. The county auditor had paid the sheriff for 364 days of service in 1989 and intended to pay him for 4 days in 1993. The question arose whether this manner of payment was a correct interpretation of the words “annual compensation” as used in R.C. 325.06 and R.C. 325.18.<sup>6</sup> In concluding that it was, the opinion noted that the words “annual compensation” are used in conjunction with the words “calendar year” and that the words “calendar year” are commonly understood to designate the period from January 1 through December 31.<sup>7</sup> 1990 Op. Att’y Gen. No. 90-023, at 2-86. Thus, the opinion continued, “the legislature has specified that the annual compensation of elected county officials is an amount fixed for actual calendar years,” that is, from January 1 through December 31. *Id.* Accordingly, when a county officer’s term “includes only part of a particular calendar year, the [officer] is entitled to a prorated portion of the annual compensation fixed for that year ... which portion should be calculated to reflect the number of days in that calendar year which are included in the [officer’s] term of office.” *Id.* (syllabus, paragraph 2).

1990 Op. Att’y Gen. No. 90-023 thus makes clear that the annual compensation figure fixed for a calendar year is not a guaranteed amount to which a county officer is entitled regardless of whether his term extends for the entire twelve months of the year. The annual

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<sup>6</sup> R.C. 325.06 sets forth the classification and compensation schedules for county sheriffs and is analogous to R.C. 325.04 for county treasurers and R.C. 325.10 for county commissioners. The term of a county sheriff begins on the first Monday of January following his election. R.C. 311.01(A).

<sup>7</sup> In so concluding, 1990 Op. Att’y Gen. No. 90-023 cites *State ex rel. Gareau v. Stillman*, 18 Ohio St. 2d 63, 64-65, 247 N.E.2d 461, 462 (1969), which interpreted the phrase “calendar year” as meaning “the period of time from January 1 through December 31,” and rejected the argument that it means merely the passage of 365 days. *See also* 1996 Op. Att’y Gen. No. 96-042. *Cf.* R.C. 1.44(B) (defining “[y]ear” to mean “twelve consecutive months”).

compensation figure provides the basis upon which an officer's daily rate of pay may be determined when it is necessary to prorate his compensation. Proration is based on the number of days he serves in office during a calendar year, and it is necessary when an officeholder's term begins after the first day of the calendar year or expires or otherwise ends prior to the last day of the calendar year.

2002 Op. Att'y Gen. No. 2002-006 reiterated the analysis of 1990 Op. Att'y Gen. No. 90-023 and reached the following conclusions, which we have modified to include information relative to your specific inquiry.

A county treasurer who was elected for a term beginning September 2, 2013, and ending September 3, 2017, and who is reelected in November 2016 for a four-year term beginning September 4, 2017, shall receive for the time she serves from January 1, 2017, through September 3, 2017, a prorated portion of the annual compensation fixed for her county's population class for calendar year 2017 by R.C. 325.04 and R.C. 325.18, as they read on September 2, 2013. The prorated portion is to be calculated by multiplying the applicable daily rate of pay by 246 days, or if the treasurer does not serve for her entire term, by the number of days she actually serves in office between January 1 and September 3, 2017.

A county treasurer who was elected for a term beginning September 2, 2013, and ending September 3, 2017, and who is reelected in November 2016 for a four-year term beginning September 4, 2017, shall receive for the time she serves from September 4, 2017, through December 31, 2017, a prorated portion of the annual compensation fixed for her county's population class for calendar year 2017 by R.C. 325.04, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015). The prorated portion is to be calculated by multiplying the applicable daily rate of pay by 119 days, or if the treasurer does not serve for the entire period, by the number of days she actually serves in office between September 4 and December 31, 2017. *See* 2002 Op. Att'y Gen. No. 2002-006 (syllabus, paragraphs 1 and 2).

These formulas for prorating annual compensation apply similarly to a current county commissioner who is reelected in November 2016 to a new term of office that will begin after January 1, 2017. Until the last day of the commissioner's current term, he should receive compensation that reflects a daily rate of pay determined by the annual compensation set for his office on the first day of his term in 2013. The new salary, as set forth by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015), will take effect on the first day of the commissioner's new term of office in 2017, and his compensation should be prorated from that day forward to reflect a daily rate of pay determined by the new annual salary.

Accordingly, elected county officers, including a county treasurer and county commissioners, who are elected in November 2016 to a term of office that begins after January 1, 2017, shall receive for the time they serve a prorated portion of the annual compensation for their county's population class for calendar year 2017 fixed by R.C. 325.03-.15, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015). The prorated portion is to

be calculated by multiplying the applicable daily rate of pay by the number of days the official actually serves in the term of office that begins in 2017.

**Question Three: Payments to A County Sheriff’s Furtherance of Justice Fund**

Your final question concerns the appropriate amount to be allocated to a county sheriff’s furtherance of justice fund for calendar year 2016.<sup>8</sup> The furtherance of justice fund allocation is tied to the amount of a sheriff’s statutory salary, and your question is prompted by recent legislation increasing the amount of a sheriff’s annual salary in R.C. 325.06 and R.C. 325.18. Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015).

R.C. 325.071 authorizes an allowance to a county sheriff known as the furtherance of justice fund:

There shall be allowed annually to the sheriff, in addition to all salary and allowances otherwise provided by law, an amount equal to one-half of the official salary allowed under [R.C. 325.06(A) and R.C. 325.18], to provide for expenses that the sheriff incurs in the performance of the sheriff’s official duties and in the furtherance of justice.

The amount of a sheriff’s furtherance of justice fund allocation is equal to half of “the official salary allowed” under R.C. 325.06(A) and R.C. 325.18. The words “official” and “allowed” are not defined by statute for purposes of R.C. 325.071. R.C. 1.42 provides that words not given a technical or particular meaning shall be construed according to their common usage. The dictionary defines “official” as “by, from, or with the proper authority; authorized or authoritative ... formally set or prescribed.” *Webster’s New World College Dictionary* 1015 (5th ed. 2014). “Allow,” the root word of “allowed,” is defined as “to let do, happen, etc.; permit; let ... to provide or allot (a certain amount, period of time, etc.) for a purpose[.]” *Id.* at 39. Therefore, the “official salary allowed under” R.C. 325.06(A) and R.C. 325.18 is the salary formally prescribed, provided, and allotted by R.C. 325.06(A) and R.C. 325.18.

The plain language of R.C. 325.071 thus declares that a county sheriff shall receive in his furtherance of justice fund an amount equal to half of the salary set forth in R.C. 325.06(A). This means that, when the General Assembly amends the sheriff compensation statute to effect a salary increase, the furtherance of justice fund amount reflects that increase, even if a particular sheriff is mid-term and thus prohibited from receiving the increased salary.<sup>9</sup> This is because, pursuant to R.C. 325.071, the sheriff shall receive in his furtherance of justice fund an amount equal to half of the salary *allowed by the statute*, not half of the salary he actually receives.

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<sup>8</sup> See note 1, *supra*.

<sup>9</sup> See note 2, *supra*, and discussion under Question 1.

The language of R.C. 325.071 is clear and free of ambiguity. In the absence of uncertainty, we need not interpret the statute to arrive at the intention of the General Assembly. Rather, our conclusions are based upon the plain meaning of the words the General Assembly has enacted. *See Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph two) (“the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction”); *accord State v. Hairston*, 101 Ohio St. 3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶12 (2004); 2008 Op. Att’y Gen. No. 2008-002.

Furthermore, had the General Assembly intended for the sheriff’s furtherance of justice fund allowance to match the salary the sheriff *actually receives*, it could have enacted language similar to that used in R.C. 325.12(A), which addresses the furtherance of justice fund allowance for a prosecuting attorney. *See Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm’n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other matters); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result); 2015 Op. Att’y Gen. No. 2015-037 (syllabus, paragraph 1). *See generally NACCO Indus., Inc. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997), *cert. denied*, 522 U.S. 1091 (1998) (“Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another”). The plain language of R.C. 325.12(A) declares that the prosecuting attorney of a county with a population of 70,001 or more shall receive in his furtherance of justice fund an amount equal to half of the salary the prosecuting attorney actually receives. 2015 Op. Att’y Gen. No. 2015-037 (syllabus, paragraph 1). This means that, when the General Assembly amends the prosecuting attorney compensation statute to effect a salary increase, if a particular prosecuting attorney is mid-term and thus prohibited from receiving the increased salary, the amount allocated to the prosecuting attorney’s furtherance of justice fund shall not be calculated on the basis of the increased amount of salary set forth in R.C. 325.11 and R.C. 325.18. *Id.* *See generally* Ohio Const. art. II, § 20. This is because, pursuant to R.C. 325.12(A), the prosecuting attorney of a county with a population of 70,001 or more shall receive in his furtherance of justice fund an amount equal to half of the salary he *receives*, not half of the salary prescribed by statute.<sup>10</sup> Accordingly, we conclude that a county sheriff shall

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<sup>10</sup> Like the sheriff, a prosecuting attorney of a county with a population less than 70,001 shall receive in his furtherance of justice fund, pursuant to R.C. 325.12(B), an amount equal to half of the salary *specified by statute* (R.C. 325.11, R.C. 325.18) for a prosecuting attorney with a private practice. This means that, when the General Assembly amends the prosecuting attorney compensation statute to effect a salary increase, the furtherance of justice fund amount reflects

receive in his furtherance of justice fund, pursuant to R.C. 325.071, an amount equal to half of the annual salary allowed by R.C. 325.06(A), regardless of the amount of annual salary the sheriff actually receives.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. For the purpose of Article II, § 20 of the Ohio Constitution, the phrase “term of office” means the period for which a person is appointed or elected to a public office.
2. A person appointed to a vacancy in a county office that has been vacated due to the death, resignation, or retirement of the previous officeholder commences a new term of office for the purpose of Article II, § 20 of the Ohio Constitution and shall receive the rate of compensation for that office that is in effect at the time he commences his service in office.
3. A person appointed to a vacancy in a county office whose resignation or retirement from that office created the vacancy does not upon his appointment commence a new term of office for the purpose of Article II, § 20 of the Ohio Constitution and shall not receive an increase in the compensation for that office that was authorized or enacted after the commencement of his original term of office.
4. Elected county officers, including a county treasurer and county commissioners, who are elected in November 2016 to a term of office that begins after January 1, 2017, shall receive for the time they serve a prorated portion of the annual compensation fixed for their county’s population class for calendar year 2017 by R.C. 325.03-15, as amended by Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff., in part, July 1, 2015). The prorated portion is to be calculated by multiplying the applicable daily rate of pay by the number of days the official actually serves in the term of office that begins in 2017.

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that increase for a prosecuting attorney of a county with a population less than 70,001. This is because, pursuant to R.C. 325.12(B), the prosecuting attorney of a county with a population less than 70,001 shall receive in his furtherance of justice fund an amount equal to half of the salary *specified under the statute*, not half of the salary he actually receives. *See* 2015 Op. Att’y Gen. No. 2015-037 (syllabus, paragraph 2).

5. A county sheriff shall receive in his furtherance of justice fund, pursuant to R.C. 325.071, an amount equal to half of the annual salary allowed by R.C. 325.06(A), regardless of the amount of annual salary the sheriff actually receives.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General