



Dave Yost • Auditor of State

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FROM: Dave Yost
Ohio Auditor of State

SUBJECT: Compensation Increase Legislation pertaining to Nonjudicial County Elected Officials, Judges and Boards of Elections Members (House Bill Number 64)

The guidance herein regarding (1) the timing of increases, (2) prorating salaries and (3) FOJ still applies. However, we have omitted County Commissioner Advisory Bulletin (CAB) 2015-01, previously appended to this Bulletin.

The guidance in AOS Bulletin 2019-01 / CAB 2019-02 superseded it.

Attached is a copy of the County Commissioner Association of Ohio Advisory Bulletin 2015-01 outlining the various compensation increases for county elected officials set forth in House Bill 64, which was passed by the General Assembly as an emergency measure and took effect on September 29, 2015. The information in the CCAO's Advisory Bulletin has been reviewed by the Auditor of State's Office and we concur with its substantive content.

The Auditor of State's Office does point out two minor changes made to the original CCAO Advisory Bulletin attached to this document. On page 6, the second paragraph has been changed to correct references from "Tables 3 and 4" to "Table 2". In addition, the word "salary" has been modified to "salaries".

Also included in this Bulletin are discussions of three points relating to compensation increases that were reviewed in 2016 OAG 008 (hereinafter OAG 008). This opinion bears on issues relevant to changes in the compensation of elected officials which become effective during a current term in office.

Timing of Compensation Increases

Article II, Section 20 of the Ohio Constitution generally prohibits the compensation of an elected official being modified when the modification is adopted during the elected official's current term of office. What has been less clear is whether a person appointed to a vacancy in a county elected office (due to the death, resignation, or retirement of the incumbent) thereby commences a "new term of office"; and, if so, whether the appointee is entitled to the benefit of an increase in compensation that was enacted prior to his or her appointment, but after the commencement of the term in office of his or her predecessor.

After fully defining "term of office" under Ohio's applicable legal authority, OAG 008 opines that the phrase attaches to the person who is holding office, and not the length of time established by law for a single "term" of a particular public office. Accordingly, in conjunction with 1969 OAG 194, it is the opinion of the Attorney General that an individual who fills a vacancy in an elected position is entitled to a rate of compensation in effect at the time he or she commences his or her term of office, rather than the rate in effect when the appointee's predecessor began his or her term of office. However, OAG 008 makes a distinction: while a person appointed to a vacant position is entitled to the rate of compensation in effect at the time he or she commences his or her term of office, this is true **only if** the appointee and the incumbent officeholder are **not** the same person. Thus, an officeholder may not receive an increase in compensation that became effective during his or her term of office by simply resigning and then being reappointed to the same office. Rather, when an individual appointed to a vacant public office is the same person who held the office immediately prior to the occurrence of the vacancy, the individual continues his or her "original term" and is not entitled to an increase in salary.

Prorating Annual Salaries for Elected County Officeholders

Next, OAG 008 addresses a county official's annual salary. Generally speaking, a county official's salary is set at an annual rate. This annual rate designates the period of annual compensation from January 1 to December 31. Therefore, in order for a county official to receive his or her entire annual salary, he or she would have to serve in office for the entire calendar year from January 1 to December 31.

However, if a county official begins his or her term of office after January 1, the county official's salary should be prorated based on the number of days he or she actually serves in office.¹ Likewise, if a county official vacates his or her office before December 31, his or her salary should also be prorated to reflect the actual days served in office. Thus, a prorated annual salary will only apply in one of two specific instances: first, when an officeholder begins his or her term of office after the first day of the calendar year (January 1); or second, when an officeholder vacates his or her term of office (by death, resignation, retirement, etc.), prior to the last day of the calendar year (December 31).

¹ The prorated portion is to be calculated by multiplying the applicable daily rate of pay by the number of days served in office.

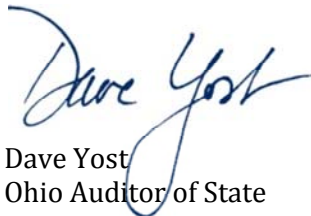
Payments to a County Sheriff's Furtherance of Justice Fund

Finally, OAG 008 concerned the appropriate amount that is to be allocated to a county sheriff's furtherance of justice (FOJ) fund for calendar year 2016. An FOJ's allocation is tied to the amount of a sheriff's statutory salary. Under R.C. 325.071, a county sheriff is afforded an annual FOJ allocation in an amount equal to one-half of the official salary allowed under R.C. 325.06(A) and 325.18. Thus, the plain language of R.C. 325.071 declares that a country sheriff shall receive in the FOJ fund an amount equal to one-half of the salary set forth in R.C. 325.06(A).

As such, when the General Assembly amends the sheriff compensation statute to provide for a salary increase, the FOJ fund should reflect this increase as well. This applies even though a particular sheriff may be "mid-term", and, therefore, may be prohibited from receiving an immediate increase in his or her salary. This is because R.C. 325.071 provides that a sheriff shall receive in his or her FOJ fund an amount equal to one-half of the salary **allowed by the statute**, not one-half of the salary actually received.

In addition, OAG 008 distinguishes a sheriff's FOJ fund from that provided for a prosecuting attorney. As to the FOJ fund of a prosecuting attorney of a county with a population of 70,001 or more, the prosecuting attorney is to receive as an annual FOJ fund allocation an amount equal to one-half of the salary he or she **receives**, not one-half of the salary prescribed by statute. This distinction suggests that the General Assembly intended to differentiate between the amounts allowable to the two types of FOJ funds — otherwise each of the statutes would have been enacted with the same language. Therefore, a county sheriff shall receive in his or her FOJ fund an amount equal to one-half of his or her annual salary allowed by R.C. 325.06(A), regardless of the amount of annual salary the sheriff actually receives, while the annual allocation to the FOJ fund of a prosecuting attorney is determined by the salary which the incumbent office holder actually receives.

Questions about this bulletin may be directed to Cheryl Subler, CCAO Senior Policy Analyst, at csubler@ccao.org or at CCAO's toll free number 1-888-757-1904, or to the Auditor of State's Legal Division at legaldivision@ohioauditor.gov or at (614) 752-8683.



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