

OPINION NO. 67-028**Syllabus:**

Under Section 20, Article II, Ohio Constitution, a county court judge is ineligible to receive a salary increase, enacted by the Ohio General Assembly, effective after his term of office has begun.

To: John D. Sears, Jr., Crawford County Pros. Atty., Bucyrus, Ohio
By: William B. Saxbe, Attorney General, March 8, 1967

I have before me your request for my opinion which reads as follows:

"I have been requested by the County Judge of the Western District of Crawford County, Ohio as to whether or not he would be entitled to the benefits of the increase in salary as provided by Section 1907.082 of the Revised Code of Ohio.

"The county Judge was elected in November 1964 to said office beginning January 1, 1965 and the effective date of Section 1907.081 raising the amount of three cents per capita to six cents per capita of the population of the county was November 3, 1965.

"The question is whether or not he would of been entitled to the increase starting with January 1, 1966 and January 1, 1967 or does the increase only begin when starting a new term after the effective date?"

It is not clear from your request as to which of the salary increases enacted by the Ohio General Assembly you are referring. Since my conclusion will apply equally to both enactments, for the purposes of this opinion it is assumed your request for an opinion questions the application of both Sections 1907.081, Revised Code, and 1907.082, Revised Code, to the situation you describe.

Section 1907.082, Revised Code, (amended effective December 18, 1964) to which you refer, reads as follows:

"In addition to the compensation provided in section 1907.081 ~~1907.08.1~~ of the Revised Code, the board of county commissioners may provide for payment of a fixed annual amount, not to exceed two thousand dollars, to each county court judge."

Section 1907.081, Revised Code, (amended effective November 3, 1965) to which you refer, reads as follows:

"Judges of the county court shall receive as compensation one thousand five hundred dollars per annum plus an additional amount equal to six cents per capita of the population of the county court district as determined by the last federal decennial census. Such additional amount shall not exceed the sum of three thousand dollars per annum."

"The compensation of judges of the county court shall be paid in semimonthly installments payable from the treasury of the county in which the court is situated."

"A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office."

Under Section 20, Article II, Ohio Constitution, the salary of a county court judge may not be diminished or increased during his term in office. This section reads:

"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."

A leading Ohio case relating to the questions here presented is State, ex rel., Mack, Judge, v. Guckenberger, Auditor, 139 Ohio St. 273 (1942) in which the first paragraph of the syllabus reads as follows:

"1. By reason of Section 14, Article IV of the Constitution, a legislative act diminishing or increasing the compensation of common pleas judges on the basis of change of population of the county in which they are elected, has no application to a judge of the Common Pleas Court whose term of office commenced before the act became effective."

Judge Hart, speaking for the Court, then referred to Sec-

tion 20, Article II, Ohio Constitution, and noted that the prohibition therein was almost identical with that contained in Section 14, Article IV, Ohio Constitution. Thus, although a decision in this case was directed toward judges of the Court of Common Pleas, the reasoning is equally applicable to the situation you describe in your request for my opinion.

In Opinion No. 1907, Opinions of the Attorney General for 1958, page 196, the syllabus reads as follows:

"By reason of the provisions of Section 20, Article II, Ohio Constitution, a board of county commissioners is without power, under the provisions of Section 1907.082, Revised Code, to increase the salary of a county court judge during his existing term."

Directly in point is Opinion No. 65-18, Opinions of the Attorney General for 1965, page 50, in which the second paragraph of the syllabus reads:

"Only those county court judges whose terms commence after the effective date (December 18, 1964) of the amendment to Section 1907.082, Revised Code, are entitled to the increase in compensation provided therein."

Against this background it is clear that only a judge beginning his term in January of 1965, would be entitled to the salary increase provided by the amendment to Section 1907.082, supra. Since the present County Judge of the Western District of Crawford County, Ohio began his term in January of 1965 he would be eligible to receive the salary increase provided in the amendment of December 18, 1964 to Section 1907.082, supra.

However, the present County Judge of the Western District of Crawford County would be ineligible to receive the salary increase provided by the November 3, 1965 amendment to Section 1907.081, supra, during the term he was serving at the time the amendment became effective. The salary of a public officer may not be increased or diminished after the beginning of his term. See Section 20, Article II, Ohio Constitution. It is axiomatic that a county court judge is an officer of the state within the meaning of the Ohio Constitution. See State, ex rel., Landis v. Board of Commissioners, et al., 95 Ohio St. 157 (1917). Since the present County Court Judge of the Western District of Crawford County, Ohio, began his term January 1, 1965 he would not be entitled to the salary increase enacted by the General Assembly and effective November 3, 1965, in the amendment to Section 1907.081, supra, after his term in office had begun.

It is therefore my opinion and you are accordingly advised that under Section 20, Article II, Ohio Constitution, a county court judge is ineligible to receive a salary increase, enacted by the Ohio General Assembly, effective after his term of office has begun.