

June 13, 2019

The Honorable Joel Blue
Guernsey County Prosecuting Attorney
627 Wheeling Avenue
Cambridge, Ohio 43725

SYLLABUS:

2019-018

1. Guernsey County is required to pay the following costs associated with the position of the elected, full-time judge of the Cambridge Municipal Court: two-fifths of the judge's local salary of \$61,750 pursuant to R.C. 1901.11(B)(1)(a); two-fifths of the judge's annual stipend of \$1,500 for service as presiding and administrative judge of the court pursuant to R.C. 1901.11(B)(2); two-fifths of the portion of the costs, premiums, or charges for health care coverage not paid by the judge pursuant to R.C. 1901.111(C)(2); two-fifths of employer contributions to the Ohio Public Employees Retirement System (OPERS) if the judge is a member of OPERS; two-fifths of employer-paid workers' compensation premiums; and two-fifths of employer-paid Medicare taxes. (2016 Op. Att'y Gen. No. 2016-020, followed.)
2. Pursuant to R.C. 1901.123(A), Guernsey County is required to pay the per diem compensation to which a duly appointed acting judge or assigned judge is entitled, subject to reimbursement by the administrative director of the Ohio Supreme Court under R.C. 1901.123(B).
3. Because the question posed relating to the appropriate apportionment of the costs of compensation of municipal court magistrates for the Cambridge Municipal Court involves the interpretation and reconciliation of two apparently conflicting, unanimous decisions of the Ohio Supreme Court, and, in view of the fundamental constitutional principle of separation of powers, we deem it improper for the Ohio Attorney General to afford instruction on the interpretation and reconciliation of the court's decisions, matters which lie squarely within judicial authority and prerogatives. On that basis, we refrain from addressing this question.

4. Guernsey County is required to pay the following costs associated with the clerk of the Cambridge Municipal Court: two-fifths of the clerk's salary pursuant to R.C. 1901.31(C)(3); two-fifths of the portion of the costs, premiums, or charges for health care coverage not paid by the clerk; two-fifths of OPERS employer contributions; two-fifths of employer-paid workers' compensation premiums; two-fifths of employer-paid Medicare taxes; and two-fifths of the costs, premiums, or charges of the liability coverage paid on behalf of the clerk pursuant to R.C. 1901.381(D). (2016 Op. Att'y Gen. No. 2016-020, followed.)
5. Guernsey County is required to pay the following costs associated with the bailiff of the Cambridge Municipal Court: two-fifths of the bailiff's salary pursuant to R.C. 1901.32(A)(1); two-fifths of the portion of the costs, premiums, or charges for health care coverage not paid by the clerk; two-fifths of OPERS employer contributions; two-fifths of employer-paid workers' compensation premiums; and two-fifths of employer-paid Medicare taxes. The elected, full-time judge of the Cambridge Municipal Court may appoint one bailiff that is subject to the two-fifths/three-fifths compensation division from the Guernsey County treasury and City of Cambridge treasury. (2016 Op. Att'y Gen. No. 2016-020, followed; 2003 Op. Att'y Gen. No. 2003-020, clarified.)
6. Guernsey County is not required to pay any portion of the compensation of deputy bailiffs of the Cambridge Municipal Court.



DAVE YOST
OHIO ATTORNEY GENERAL

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

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

June 13, 2019

OPINION NO. 2019-018

The Honorable Joel Blue
Guernsey County Prosecuting Attorney
627 Wheeling Avenue
Cambridge, Ohio 43725

Dear Prosecutor Blue:

You have requested an opinion regarding the responsibility of Guernsey County to pay for the compensation of certain officials and employees of the Cambridge Municipal Court. Specifically, you ask about the obligation of Guernsey County to pay portions of the salaries, benefits, and costs associated with the following positions: elected, full-time judge; acting and assigned judges; appointed, full-time magistrate; clerk; bailiff; and deputy bailiffs.

Cambridge Municipal Court

Ohio municipal courts are created by the General Assembly pursuant to the General Assembly's authority to establish courts that are inferior to the Supreme Court, courts of appeals, and courts of common pleas. *See* R.C. Chapter 1901; *see also* Ohio Const. art. IV, § 1 (vesting judicial power in a "supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law"). Municipal courts are served by either a single full-time elected judge or multiple judges. R.C. 1901.08. Acting judges may be appointed to fulfill the duties of an elected or appointed municipal court judge if the municipal court judge is temporarily absent. R.C. 1901.121(A). Assigned judges may be appointed by the chief justice of the Ohio Supreme Court if a judge is unavailable due to disqualification, suspension, or recusal. *Id.* A municipal court may appoint magistrates and other court employees. *See* R.C. 1901.26(B)(1)(a); R.C. 1901.33(A). Municipal courts are also served by a clerk, deputy clerks, bailiffs, and deputy bailiffs. R.C. 1901.31; R.C. 1901.32. Although certain characteristics are common to all municipal courts in Ohio, various features distinguish municipal courts from one another. *See generally* R.C. Chapter 1901 (detailing the intricate Ohio municipal court system); 2016 Op.

Att’y Gen. No. 2016-020, at 2-209 to 2-210; 1990 Op. Att’y Gen. No. 90-110, at 2-486 to 2-491. For example, certain municipal courts are styled as “county-operated municipal courts” and are treated differently than other municipal courts. *See* R.C. 1901.03(F).¹

The General Assembly has established the Cambridge Municipal Court in the City of Cambridge with jurisdiction within Guernsey County. R.C. 1901.01(A); R.C. 1901.02(B). The Cambridge Municipal Court is served by one full-time, elected judge. R.C. 1901.08. You have indicated that one full-time magistrate serves the Cambridge Municipal Court, along with various acting judges who are selected for temporary engagements throughout the year. A clerk of courts appointed by the court also serves the Cambridge Municipal Court. R.C. 1901.31(A)(2)(a). In addition, the court has hired several individuals each of whom is denoted as a “bailiff.” Guernsey County is required to pay two-fifths of the salary and certain benefits of the elected municipal court judge, as well as two-fifths of the salaries and certain benefits of the municipal court clerk and bailiff, with the remaining three-fifths paid from the City of Cambridge treasury. R.C. 1901.11(C); R.C. 1901.111(C)(2); R.C. 1901.31(C)(3); R.C. 1901.312(C)(2)(a); R.C. 1901.32(A)(1). The liability coverage of a municipal court clerk is subject to the same fractional division between the county and city treasuries, absent an agreement between the county and city to the contrary. *See* R.C. 1901.381(D). The salaries and benefits of all deputy clerks of court, deputy bailiffs, and other employees of the Cambridge Municipal Court are paid entirely out of the City of Cambridge treasury. *See* R.C. 1901.31(H); R.C. 1901.312(C)(2)(b); R.C. 1901.32(A)(2); R.C. 1901.33(A); R.C. 1901.36(A).

You have asked us to detail the obligations of Guernsey County as they relate to funding all or part of the salaries, benefits, and costs associated with each of the above positions.

Judge

The full-time judge of the Cambridge Municipal Court was, for calendar year 2018, entitled to the salary described in R.C. 141.04(A)(5)(a), or \$132,150. The judge’s annual salary is paid from three sources: the state treasury, the City of Cambridge treasury, and the Guernsey County treasury. The full-time judge of the Cambridge Municipal Court received \$70,400 from the state treasury. *See* 141.04(A)(5); R.C. 1901.11(B)(1)(b). The remainder of the judge’s salary, or \$61,750, is paid by the City of Cambridge and Guernsey County. This portion of the judge’s salary is referred to as the judge’s “local salary.” *See* R.C. 1901.11(B)(1)(a). Three-fifths of the judge’s local salary comes from the city treasury and two-fifths of the judge’s local salary comes from the county treasury. *Id.*; R.C. 1901.11(C). In addition, the presiding judge of a municipal court, who also serves as the court’s administrative judge, is entitled to an annual stipend of \$1,500, paid according to the same fractional division as the municipal court judge’s local salary. R.C. 1901.11(B)(2); R.C. 1901.11(C). The single, full-time judge of the Cambridge Municipal Court serves as the court’s presiding judge and administrative judge and is, therefore, entitled to the additional \$1,500 stipend. R.C. 1901.09(A); 2005 Op. Att’y Gen.

¹ Guernsey County does not have a county-operated municipal court within the county.

No. 2005-032, at 2-337. The full-time judge of the court, therefore, is paid a total of \$63,250 by Guernsey County and the City of Cambridge, according to the fractional division under R.C. 1901.11. Consequently, Guernsey County is required to pay two-fifths of \$63,250, or \$25,300, while the City of Cambridge is required to pay the remaining three-fifths of \$63,250, or \$37,950.

Guernsey County is also responsible for paying two-fifths of the costs of other benefits provided to the judge of the Cambridge Municipal Court, as well as payments made on the judge's behalf, including two-fifths of the costs, premiums, or charges for health care coverage not paid by the judge. R.C. 1901.111(C)(2); 2016 Op. Att'y Gen. No. 2016-020 (syllabus, paragraph 4).² We have also concluded that a county such as Guernsey County is required to pay two-fifths of the cost of employer contributions to the Ohio Public Employees Retirement System (OPERS) for a judge who elects to become a member of OPERS,³ two-fifths of the cost of workers' compensation premiums paid on behalf of the judge, and two-fifths of the cost of employer-paid Medicare taxes on behalf of the judge. *See* 2016 Op. Att'y Gen. No. 2016-020 (syllabus, paragraphs 1 to 3).

Acting and Assigned Judges

The compensation system for acting and assigned judges is different from the system used to compensate elected, full-time municipal court judges. Acting judges are appointed by the municipal court judge in the event of the municipal court judge's temporary absence. R.C. 1901.121(A)(2)(a). Acting judges are entitled to reimbursement for actual and necessary expenses, as well as a per diem compensation established by the incumbent municipal court judge. R.C. 1901.122(A)(1). The per diem compensation for an acting judge "shall not exceed the per diem compensation paid to the incumbent judge based upon a work year of two hundred fifty days." R.C. 1901.122(A)(1)(a). Assigned judges are appointed by the chief justice of the Ohio Supreme Court if the incumbent judge of a single-judge municipal court is incapacitated due to disqualification, suspension, recusal, or temporary absence. R.C. 1901.121(A)(1); R.C. 1901.121(A)(2)(b). Assigned judges are entitled to reimbursement for expenses and a per diem compensation established by statute. R.C. 1901.122(B). Instead of the county paying only two-fifths of the compensation of acting and assigned judges, the county is responsible for paying the judges' entire per diem compensation. R.C. 1901.123(A). To receive reimbursements, the county must then submit quarterly requests for reimbursements of the per diem amounts to the

² "Health care coverage" is defined as "sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services." R.C. 1901.111(A).

³ As an elected official, the full-time judge of the Cambridge Municipal Court may, but is not required to, become a member of OPERS. *See* R.C. 145.01(A)(1); R.C. 145.03; R.C. 145.20; *see also* 2016 Op. Att'y Gen. No. 2016-020, at 2-207.

administrative director of the Ohio Supreme Court. The county is reimbursed for the charges if the director verifies that such per diem payments were in fact made. *See* R.C. 1901.123(B).

Therefore, Guernsey County is responsible for paying the entire per diem compensation of a properly appointed acting or assigned judge of the Cambridge Municipal Court, subject to reimbursement from the administrative director of the Ohio Supreme Court.

Magistrate

A municipal court magistrate is a court employee. *See* 2004 Op. Att’y Gen. No. 2004-030, at 2-270 to 2-271. The Revised Code authorizes a judge of a single-judge municipal court to appoint court employees. Such employees include a number of positions specifically identified in R.C. 1901.33(A) who are compensated from the city treasury. R.C. 1901.33(A). Although R.C. 1901.33(A) does not expressly list magistrates as employees whom the court may appoint, the statute provides that a court may appoint “other court aides.” In addition, R.C. 1901.36 authorizes the legislative authority of a city to provide a municipal court with “any other employees that are necessary, each of whom shall be paid such compensation out of the city treasury as the legislative authority prescribes.” *See* R.C. 1901.36(A). Further, the Ohio rules of court procedure expressly permit municipal courts to appoint magistrates to assist the courts in carrying out their duties and to establish the magistrates’ compensation. *See* Ohio Sup. R. 19.1(B); *see also* Ohio R. Civ. P. 53(A)-(C); Ohio R. Crim. P. 19(A)-(C); Ohio R. Juv. P. 40(A)-(C); Ohio Traf. R. 14. Finally, the position of magistrate is distinct from the positions of elected, full-time judge and acting judge or assigned judge. 2004 Op. Att’y Gen. No. 2004-030, at 2-270 n.4 (“[b]y law, the positions of municipal court judge and municipal court magistrate are separate and distinct”). Generally, employees of a municipal court are compensated entirely out of the city treasury, unless the compensation structure is otherwise delineated by statute. *See, e.g.*, R.C. 1901.31(C)(3) (municipal court clerk is compensated in the same manner as the municipal court judge); *see also State ex rel. Musser v. City of Massillon*, 12 Ohio St. 3d 42, 45, 465 N.E.2d 400 (1984).

In considering whether a municipal court magistrate is to be compensated entirely out of the city treasury or whether the magistrate’s compensation is subject to the two-fifths/three-fifths division between county and city treasuries, two reasonable interpretations of the statutes and case law are available. We cannot, with certainty, say which interpretation is the more reasonable one, as both interpretations hinge on the reconciliation of two seemingly divergent cases of the Ohio Supreme Court.

In the first case, *State ex rel. City of Canton v. Sponseller*, the Court evaluated R.C. 1925.01, which provides for the compensation of municipal court small claims magistrates. 49 Ohio St. 2d 282, 361 N.E.2d 240 (1977) (referring to magistrates as “referees”). R.C. 1925.01 provides that the magistrate of a municipal court small claims division shall be compensated “from the same sources and in the same manner as provided in [R.C. 1901.11].” *See* R.C.

1925.01(A)-(B).⁴ *Sponseller* involved a small claims referee who was assigned additional duties, such as hearing default proceedings, forcible entry and detainer actions, and other cases assigned by the court. *Sponseller, supra*, at 282-283. Under these circumstances, the Supreme Court unanimously concluded that “[e]xtension of the referee’s duties by the Canton Municipal Court does not alter the legislative mandate that the city and county share the compensation expense of the referee as provided in R.C. 1901.11.” *Id.* at 283. It appears the Court concluded that, because the referee worked in the small claims division of the municipal court, but was assigned extra duties as needed, the referee’s entire compensation was subject to the two-fifths/three-fifths division between county and city treasuries.

In the second case, decided seven years after *Sponseller*, the Court unanimously determined that a referee/magistrate of a municipal court was an employee of the court under R.C. 1901.36. *State ex rel. Musser v. City of Massillon*, 12 Ohio St. 3d 42, 45-46, 465 N.E.2d 400 (1984). R.C. 1901.36 provides that “[t]he legislative authority shall provide any other employees that are necessary, each of whom shall be paid such compensation *out of the city treasury* as the legislative authority prescribes.” (Emphasis added.) In other words, as an employee of the court, the logical implication of the court’s reasoning was that the referee’s compensation was to be paid entirely out of the city treasury, rather than divided among county and city treasuries under the fractional division in R.C. 1901.11. The *Musser* Court did not consider *Sponseller* and the Court did not address a small claims referee’s compensation under R.C. 1925.01. Consequently, the Supreme Court has issued two unanimous decisions that are in apparent conflict. On the one hand, in *Sponseller*, the court has said the compensation of a small claims magistrate is subject to the two-fifths/three-fifths division between county and city treasuries, even if that magistrate performs non-small claims work. On the other hand, the Court has said in the later case, *Musser*, that a municipal court magistrate is a court employee under R.C. 1901.36 whose compensation is to be paid entirely from the city treasury.

As such, the question which you pose relating to the appropriate apportionment of the costs of compensation of municipal court magistrates involves the interpretation and reconciliation of two, apparently conflicting, unanimous decisions of the Ohio Supreme Court.

⁴ At the time of the *Sponseller* decision, R.C. 1925.01 provided, in relevant part, as follows:

(A) Each municipal and county court shall establish a small claims division.

(B) Proceedings in the small claims division of a municipal court may be conducted by a referee appointed by the court, who shall be a person admitted to the practice of law in this state, and who shall receive such annual compensation as the court prescribes from the same sources and in the same manner as provided in [R.C. 1901.11].

See 1967-1968 Ohio Laws, Part I, 901, 901-902 (Am. Sub. H.B. 475, eff. Nov. 21, 1967).

A fundamental principle of constitutional law dictates that the legislative, executive, and judicial branches of government are separate and distinct, and that one branch may not impinge upon the rights or authority of the others. *See* 1992 Op. Att’y Gen. No. 92-038; *see also State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E. 2d 57 (1955); *Knapp v. Thomas*, 39 Ohio St. 377, at 391 (1883) (“each [branch of government] can best preserve the jurisdiction and power confided to it, by carefully abstaining from all interference with the rightful authority of the others”). The Attorney General is a member of the executive branch of government. Ohio Const. art. III, § 1; *State ex rel. Doerfler v. Price*, 101 Ohio St. 50, 128 N.E. 173 (1920). There is no express grant of constitutional or statutory authority for the Attorney General to review determinations of the judicial branch of government. *See* 1992 Op. Att’y Gen. No. 92-038; 1984 Op. Att’y Gen. No. 84-077; 1972 Op. Att’y Gen. No. 72-097; 1928 Op. Att’y Gen. No. 2304, vol. III, p. 1648, at 1649; *see also* Ohio Const. art. III. It is improper for the Attorney General to review the judgments and proceedings of a court of competent jurisdiction, *see* 1928 Op. Att’y Gen. No. 2304, vol. III, p. 1648, at 1649, or to offer guidance on an issue which, at the time, is pending in a court proceeding. *See* 1972 Op. Att’y Gen. No. 72-097, at 2-392. We consider it equally inappropriate and an impingement upon judicial authority and prerogatives for the Attorney General to afford instruction on the interpretation and reconciliation of the two decisions described above. On that basis, we refrain from addressing the issues which are the subject of these two judicial matters.

Clerk

The clerk of the Cambridge Municipal Court is appointed by the court. R.C. 1901.31(A)(2)(a). The clerk’s compensation is payable in the same manner as the compensation of the municipal court judge. *See* R.C. 1901.31(C)(3). Namely, Guernsey County is responsible for paying two-fifths of the clerk’s compensation and the City of Cambridge is responsible for paying the remaining three-fifths of the clerk’s compensation.

In addition, Guernsey County is responsible for paying two-fifths of other benefits and expenses associated with the position of municipal court clerk, including two-fifths of the portion of the costs, premiums, or charges in connection with health care coverage provided to the clerk of the Cambridge Municipal Court. R.C. 1901.312(C)(2)(a); 2016 Op. Att’y Gen. No. 2016-020 (syllabus, paragraph 4).⁵ Further, we have concluded that a county such as Guernsey County is required to pay two-fifths of the cost of employer contributions to OPERS for an appointed clerk of a municipal court, two-fifths of the cost of workers’ compensation premiums paid on behalf of the clerk, and two-fifths of the cost of employer-paid Medicare taxes on behalf of the clerk. *See* 2016 Op. Att’y Gen. No. 2016-020 (syllabus, paragraphs 1 to 3). Finally, in the absence of an agreement between Guernsey County and the City of Cambridge to the contrary, Guernsey County is responsible for paying two-fifths of the costs, premiums, or charges of the liability coverage for the clerk of the Cambridge Municipal Court. *See* R.C. 1901.381(D); *see also* R.C.

⁵ The compensation and costs of health care coverage for deputy clerks of the municipal court are paid from the city treasury. *See* R.C. 1901.31(H); R.C. 1901.312(C)(2)(b).

1901.381(A) (“[e]ach clerk of a municipal court shall have liability coverage as a condition of performing the duties of his office”).

Bailiff

R.C. 1901.32 provides for the method of compensation for municipal court bailiffs and deputy bailiffs. The statute states, in relevant part:

(A) The bailiffs and deputy bailiffs of a municipal court shall be provided for ... as follows:

(1) Except for the Hamilton county municipal court, the court shall appoint a bailiff who shall receive the annual compensation that the court prescribes payable ... from the same sources and in the same manner as provided in [R.C. 1901.11].

(2) Except for the Hamilton county municipal court, deputy bailiffs may be appointed by the court. Deputy bailiffs shall receive the compensation payable ... out of the city treasury that the court prescribes, except that the compensation of deputy bailiffs in a county-operated municipal court shall be paid out of the treasury of the county in which the court is located.

R.C. 1901.32(A)(1)-(2). The question you have raised is whether a municipal court is entitled to hire multiple bailiffs whose salaries are paid according to the fractional division for payments between county and city treasuries. R.C. 1901.32(A) is subject to two interpretations. First, the statute may be interpreted to authorize a municipal court to appoint a single bailiff subject to the two-fifths/three-fifths division for the entire court, regardless of the number of judges of the court. Second, the statute may be interpreted to authorize each elected judge of the court to hire a bailiff whose compensation is subject to the two-fifths/three-fifths division. In the case of a single-judge municipal court such as the Cambridge Municipal Court, both interpretations lead to the same result. Namely, the full-time judge of the Cambridge Municipal Court may hire only one bailiff whose compensation is subject to the two-fifths/three-fifths division between county and city treasuries.⁶

Our conclusion requires us to clarify 2003 Op. Att’y Gen. No. 2003-020. In that opinion, we advised that “Lorain County is required by R.C. 1901.32 and R.C. 1901.11 to pay two-fifths of the compensation of *all bailiffs* appointed by the Elyria Municipal Court and the Lorain Municipal Court, absent a showing by the county that a court has acted unreasonably ... by

⁶ Your questions are posed in the context of a single-judge municipal court. Our opinion, therefore, is limited to such courts, and does not address the number of bailiffs which are permitted for multi-judge municipal courts or the division of compensation costs of bailiffs in a multi-judge municipal court.

employing more than one bailiff.” 2003 Op. Att’y Gen. No. 2003-020 (syllabus) (emphasis added). In the 2003 opinion, we noted that Elyria Municipal Court and Lorain Municipal Court each had two elected, full-time judges. *Id.* at 2-157. Each judge had one bailiff, for a total of four bailiffs. *Id.* We concluded that all bailiffs then employed by the Elyria and Lorain Municipal Courts (one for each judge) were subject to the two-fifths/three-fifths division for salary payments between the county and city treasuries. Therefore, references in the opinion to “*all* bailiffs” appointed by the Elyria and Lorain Municipal Courts simply refer to the bailiffs then employed by the courts, or, one bailiff per municipal court judge. In short, the 2003 opinion does not stand for the proposition that a municipal court may hire an indefinite number of bailiffs whose compensation is subject to the two-fifths/three-fifths division between county and city treasuries.

As noted above, the Cambridge Municipal Court is a single-judge municipal court. R.C. 1901.08. We conclude, therefore, that the elected, full-time judge of the Cambridge Municipal Court has the authority to hire one bailiff whose compensation is subject to the two-fifths/three-fifths division between the Guernsey County treasury and City of Cambridge treasury. In addition, we have previously concluded that a county such as Guernsey County is required to pay two-fifths of the cost of employer contributions to OPERS made on behalf of the bailiff of a municipal court, two-fifths of the cost of workers’ compensation premiums paid on behalf of the bailiff, two-fifths of the cost of employer-paid Medicare taxes paid on behalf of the bailiff, and two-fifths of the cost of health care coverage paid on behalf of the position of bailiff of a municipal court. *See* 2016 Op. Att’y Gen. No. 2016-020 (syllabus, paragraphs 1 to 3, 5).

Deputy Bailiffs

Salary and compensation payments for deputy bailiffs are not subject to the same fractional division that is applicable to payments for bailiffs. R.C. 1901.32(A)(2) authorizes a municipal court to hire deputy bailiffs whose salaries are paid by the municipal corporation in which the court is located, providing that “[d]eputy bailiffs may be appointed by the court ... [and] shall receive the compensation payable ... out of the *city treasury* that the court prescribes.” *See* R.C. 1901.32(A)(2) (emphasis added).⁷ Guernsey County is not responsible for any portion of the compensation paid to deputy bailiffs of the Cambridge Municipal Court. Rather, the full-time, elected judge of the Cambridge Municipal Court is entitled to one bailiff whose compensation is subject to the two-fifths/three-fifths division pursuant to R.C. 1901.32(A)(1) and R.C. 1901.11. All other personnel styled as “bailiffs” are, in fact, “deputy bailiffs” for the purposes of determining the source of the deputy bailiffs’ compensation. Which

⁷ *Compare* R.C. 1901.32(A)(3) (“[t]he bailiff and all deputy bailiffs of the Hamilton county municipal court shall be appointed by the clerk and shall receive the compensation payable in semimonthly installments out of the treasury of Hamilton county that the clerk prescribes. Each judge of the Hamilton county municipal court may appoint a courtroom bailiff, each of whom shall receive the compensation payable in semimonthly installments out of the treasury of Hamilton county that the court prescribes”).

individuals are deputy bailiffs and which individual is the bailiff involves a factual inquiry that local officials should answer, and one that cannot be resolved by means of an Attorney General opinion. *See* 2005 Op. Att’y Gen. No. 2005-001, at 2-7.

Conclusions

Based on the foregoing, it is our opinion, and you are hereby advised as follows:

1. Guernsey County is required to pay the following costs associated with the position of the elected, full-time judge of the Cambridge Municipal Court: two-fifths of the judge’s local salary of \$61,750 pursuant to R.C. 1901.11(B)(1)(a); two-fifths of the judge’s annual stipend of \$1,500 for service as presiding and administrative judge of the court pursuant to R.C. 1901.11(B)(2); two-fifths of the portion of the costs, premiums, or charges for health care coverage not paid by the judge pursuant to R.C. 1901.111(C)(2); two-fifths of employer contributions to the Ohio Public Employees Retirement System (OPERS) if the judge is a member of OPERS; two-fifths of employer-paid workers’ compensation premiums; and two-fifths of employer-paid Medicare taxes. (2016 Op. Att’y Gen. No. 2016-020, followed.)
2. Pursuant to R.C. 1901.32(A), Guernsey County is required to pay the per diem compensation to which a duly appointed acting judge or assigned judge is entitled, subject to reimbursement by the administrative director of the Ohio Supreme Court under R.C. 1901.123(B).
3. Because the question posed relating to the appropriate apportionment of the costs of compensation of municipal court magistrates for the Cambridge Municipal Court involves the interpretation and reconciliation of two apparently conflicting, unanimous decisions of the Ohio Supreme Court, and, in view of the fundamental constitutional principle of separation of powers, we deem it improper for the Ohio Attorney General to afford instruction on the interpretation and reconciliation of the Court’s decisions, matters which lie squarely within judicial authority and prerogatives. On that basis, we refrain from addressing this question.
4. Guernsey County is required to pay the following costs associated with the clerk of the Cambridge Municipal Court: two-fifths of the clerk’s salary pursuant to R.C. 1901.31(C)(3); two-fifths of the portion of the costs, premiums, or charges for health care coverage not paid by the clerk; two-fifths of OPERS employer contributions; two-fifths of employer-paid workers’ compensation premiums; two-fifths of employer-paid Medicare taxes; and two-fifths of the costs, premiums, or charges of the liability

coverage paid on behalf of the clerk pursuant to R.C. 1901.381(D). (2016 Op. Att’y Gen. No. 2016-020, followed.)

5. Guernsey County is required to pay the following costs associated with the bailiff of the Cambridge Municipal Court: two-fifths of the bailiff’s salary pursuant to R.C. 1901.32(A)(1); two-fifths of the portion of the costs, premiums, or charges for health care coverage not paid by the clerk; two-fifths of OPERS employer contributions; two-fifths of employer-paid workers’ compensation premiums; and two-fifths of employer-paid Medicare taxes. The elected, full-time judge of the Cambridge Municipal Court may appoint one bailiff that is subject to the two-fifths/three-fifths compensation division from the Guernsey County treasury and City of Cambridge treasury. (2016 Op. Att’y Gen. No. 2016-020, followed; 2003 Op. Att’y Gen. No. 2003-020, clarified.)
6. Guernsey County is not required to pay any portion of the compensation of deputy bailiffs of the Cambridge Municipal Court.

Respectfully,



DAVE YOST
Ohio Attorney General