

TOWNSHIP — CLERK; COMPENSATION, DETERMINATION
OF—§507.09 R.C.

SYLLABUS:

Under the provisions of Section 507.09, Revised Code, the clerk of a township having a budget of five thousand dollars or over is entitled to receive annually, as salary, two percent of the total expenditures of such township in excess of five thousand dollars, plus the sum of \$500.00, subject to a maximum of \$2,400 in any calendar year.

Columbus, Ohio, April 9, 1959

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is sought on the following matter, we having checked the law and the prior opinions of your office and being unable to satisfactorily resolve the problem.

“The facts are:

“The problem involves the compensation of a township clerk. The problem arises under Ohio Revised Code Section 507.09. The clerk is in a township having a budget of over Five Thousand Dollars (\$5,000.00). The trustees had set the clerk's salary at Four Hundred Dollars (\$400.00) per year. We would appreciate your opinion as to the following questions.

“(1) Is a clerk in such township having a budget of over Five Thousand Dollars (\$5,000.00) per year, in addition to the percentages of the total expenditures permitted him under Revised Code Section 507.09 (c), also automatically entitled to the full amount of Five Hundred Dollars (\$500.00) per year under Section B of Revised Code 507.09?

“(2) If your answer to Question (1) is ‘No,’ that such clerk is not automatically entitled to the full Five Hundred Dollars (\$500.00) per year in addition to the percentages, then can his salary be increased from Four Hundred Dollars (\$400.00) to Five Hundred Dollars (\$500.00) per year during his term of office?

“(3) Under Revised Code Section 507.09 (b), do the township trustees determine the salary of the clerk only once during

his term of office, which amount remains the same during the entire term of four (4) years, or can they determine the salary yearly at their first organizational meeting of each calendar year, at which time it can be increased from year to year so long as it remains within the statutory limit?

“(4) Does the Board of Township Trustees have power to determine the salary of the clerk only in those townships having a budget of less than Five Thousand Dollars (\$5,000.00) per year under R.C. Sec. 507.09 (b), or do they also have power to determine the salary under Paragraph (c) of said Section?

“I realize that your answer to Question (1) may be dispositive of the remaining three questions, however, I have set them forth to dispose of the specific points raised during our review of the matter here. Your opinion on these matters will be appreciated at your earliest convenience.”

Regarding your first question, Section 507.09, Revised Code, to which you refer, reads in pertinent part as follows:

“* * * (B) In those townships having a budget less than five thousand dollars, the board shall determine the salary of the clerk, which in no event shall exceed five hundred dollars per year;

“(C) *In townships having a budget of five thousand dollars or over*, the clerk shall receive two per cent of the total expenditures of such township in excess of five thousand dollars *in addition to the amount provided under division (B) of this section.*

“No township clerk shall receive compensation in excess of twenty-four hundred dollars in any one calendar year for said services as such clerk.” (Emphasis added.)

You state that, in the instant case, the board of township trustees have set the salary of the clerk at \$400.00 and, thus, question whether the clerk should receive \$500.00 plus two percent of expenditures or \$400.00 plus two percent of expenditures. In this regard it appears to me that the salary of a clerk of a township having a budget of \$5,000 or more is governed exclusively by the provisions of division (C) of Section 507.09, *supra*, and the board is without authority to set a salary under the provisions of division (B) of the same section, which provisions deal exclusively with another classification of townships. Said division (C) sets the compensation at two percent of the total expenditures of such township in excess of five thousand dollars “in addition to the amount provided under division (B),” “the word “provided,” as here used, signifying the maximum permitted since it is evident that the

legislature intended, in townships to which division (C) applies, to "provide" a compensation in *addition to* and *in excess of* that which could be received under division (B), *supra*. Any other view could bring about an absurd result, as where the trustees fix a salary of \$1.00 per year under division (B), and the compensation under division (C) would amount to only \$50.00 *in addition*. In short, this would permit the legislative intent to be effectively thwarted.

The amount "provided" in division (B) being \$500.00 per year, it follows that the annual compensation of the clerk in the instant case should be two percent of the total expenditure of the township in excess of five thousand dollars in addition to the amount of \$500.00, subject to a maximum of \$2,400 in any calendar year.

My answer to your first question being dispositive of your remaining questions, they need not here be considered. Specifically answering your query, therefore, it is my opinion and you are advised that under the provisions of Section 507.09, Revised Code, the clerk of a township having a budget of five thousand dollars or over is entitled to receive annually, as salary, two percent of the total expenditure of such township in excess of five thousand dollars, plus the sum of \$500.00, subject to a maximum of \$2,400 in any calendar year.

Respectfully,

MARK McELROY
Attorney General