OPINION NO. 81-011

Syllabus:

1. Ohio Const. art. II, §29 is not applicable to political subdivisions such as municipalities, school districts, counties and townships and, therefore, does not prohibit the governing authorities of such subdivisions from granting retroactive pay increases to their employees. (1939 Op. Att'y Gen. No. 1330, vol. III, p. 1966; 1937 Op. Att'y Gen. No. 585, vol. I, p. 1015; 1930 Op. Att'y Gen. No. 2398, vol. II, p. 1524 approved and followed. 1976 Op. Att'y Gen. No. 76-015; 1975 Op. Att'y Gen. No. 75-048; 1938 Op. Att'y Gen. No. 3517, vol. III, p. 2471; 1937 Op. Att'y Gen. No. 748, vol. II, p. 1354; 1933 Op. Att'y Gen. No. 1981, vol. III, p. 1891; 1919 Op. Att'y Gen. No. 45, vol. I, p. 66 overruled to the extent that they are inconsistent with this opinion.)

2. In the absence of a local provision which prohibits the granting of retroactive pay increases, the governing authority of a municipal corporation may grant retroactive pay increases to municipal employees. (1973 Op. Att'y Gen. No. 73-063; 1965 Op. Att'y Gen. No. 65-123; 1964 Op. Att'y Gen. No. 780, p. 2-16 modified to the extent that they are inconsistent with this opinion.)

3. Boards of education, boards of county commissioners and boards of township trustees possess the authority to grant retroactive pay increases to their employees. (1937 Op. Att'y Gen. No. 748, vol. II, p. 1354 overruled.)

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, March 13, 1981

I have before me your request for an opinion on the following questions:

1. Is Article II, Section 29 of the Ohio Constitution applicable to political subdivisions such as municipalities, counties, townships and school districts, or does it only apply to the General Assembly?

2. If Article II, Section 29 is applicable to political subdivisions, does it prohibit the governing authority of school districts, municipalities, townships and counties from granting retroactive pay increases to their employees?

3. If Article II, Section 29 is not applicable to these political subdivisions or does not prohibit the granting of retroactive pay increases, do any of the governing authorities of these subdivisions possess the statutory authority to grant such retroactive increases?

In your first and second questions, you have inquired whether Ohio Const. art. II, §29 is applicable to political subdivisions, and if art. II, §29 is applicable,

whether it prohibits the governing authorities of political subdivisions from granting retroactive pay increases to their employees. It is my understanding that in using the term "retroactive pay increase" you are referring to an increase in salary which is adopted at a particular time and made effective as of an earlier date. As a result of said increase, the employee is actually paid compensation in addition to that previously agreed upon for services rendered during the period between the effective date of the increase and the point when the increase is granted. Such a payment of additional compensation for services already rendered comes within the prohibition of art. II, §29, if that section is applicable to political subdivisions of the state.

Ohio Const. art. II, §29 provides as follows:

> No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly.

The applicability of art. II, §29 to political subdivisions, such as municipal corporations, counties, townships and boards of education, has been the subject of a continuing controversy.[1] At the base of this controversy is the conflict between the apparent intent of the Constitutional Convention in adopting art. II, §29 as expressed in the language of that section and the apparent intent expressed in the record of the Debates of the Constitutional Convention of 1850-1851. In order to fully respond to your first and second questions, therefore, it is necessary to re-examine the provisions of art. II, §29, the history surrounding its adoption, and the cases and opinions interpreting it.

The Opinions of the Attorney General in which it was concluded that art. II, §29 is applicable to the political subdivisions of the state were based primarily upon the language of art. II, §29, and upon the Supreme Court of Ohio's interpretation of that language in State ex rel. Field v. Williams, 34 Ohio St. 218 (1877). See 1976 Op. Att'y Gen. No. 76-015; 1938 Op. Att'y Gen. No. 3517, vol. III, p. 2471; 1937 Op. Att'y Gen. No. 748, vol. II, p. 1354; 1933 Op. Att'y Gen. No. 1981, vol. III, p. 1891. In Williams, the Supreme Court, in construing the provisions of art. II, §29, stated as follows:

> This language is very broad, and was intended to embrace all persons who may have rendered services for the public in any capacity whatever, in pursuance of law, and in which the compensation for the services rendered is fixed by law, as well as persons who have performed or agreed to perform services in which the public is interested, in pursuance of contracts that may have been

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[1] Compare 1976 Op. Att'y Gen. No. 76-015 (art. II, §29 applies to county officers); 1975 Op. Att'y Gen. No. 75-048 (art. II, §29 applies to boards of education); 1938 Op. Att'y Gen. No. 3517, vol. III, p. 2471 (art. II, §29 applies to all subdivisions); 1937 Op. Att'y Gen. No. 748, vol. II, p. 1354 (art. II, §29 prohibits boards of education from granting retroactive pay increases); 1933 Op. Att'y Gen. No. 1981, vol. III, p. 1891 (art. II, §29 applies to boards of education); 1919 Op. Att'y Gen. No. 45, vol. I, p. 66 (art. II, §29 prohibits cities from granting retroactive pay increases) with 1976 Op. Att'y Gen. No. 76-047 (questioning applicability of art. II, §29 to subdivisions); 1973 Op. Att'y Gen. No. 73-063 (cities may grant retroactive pay increases); 1939 Op. Att'y Gen. No. 1330, vol. III, p. 1966 (art. II, §29 does not apply to subdivisions); 1937 Op. Att'y Gen. No. 585, vol. I, p. 1015 (art. II, §29 does not apply to subdivisions); 1930 Op. Att'y Gen. No. 2398, vol. II, p. 1524 (art. II, §29 does not prohibit the payment of moral obligations by municipal corporations).

> entered into in pursuance of law, and in which the price or consideration to be received by the contractor for the thing done, or to be done, is fixed by the terms of the contract.

Id. at 219 (emphasis added).

I agree that the language of art. II, §29, in itself, appears to evidence an intent that that section be given a broad application. After much consideration, however, I am of the opinion that it cannot be concluded, on the basis of the plain language of art. II, §29 and the Williams case alone, that art. II, §29 was intended to apply to the payment of additional compensation by political subdivisions. First of all, as was noted by my predecessor in 1939 Op. Att'y Gen. No. 1330, vol. III, p. 1966, the Williams case was concerned solely with the payment of extra compensation to state officers. Nowhere in the Williams case is the applicability of art. II, §29 to political subdivisions of the state discussed or mentioned. It is, therefore, unclear exactly what effect should be attached to the court's statement that the language of art. II, §29 is "very broad." From the language of the court's opinion it is impossible to conclude whether the court meant that art. II, §29 is applicable to the compensation of all persons rendering service to the state or to a subdivision of the state, or merely that art. II, §29 is applicable to the compensation of any person rendering services to the state, regardless of whether that person is categorized as an "officer, public agent, or contractor."

Secondly, it should be noted that the language of art. II, §29, as adopted, is not the same as the language of that section as originally introduced, and that the change in language resulted from the action of the Committee on Revision, Arrangement and Enrollment. Debates of the Constitutional Convention of 1850-1851, vol. I, p. 164; vol. II, p. 808. As originally introduced in the report on the "Legislative Department," art. II, §29 (then numbered §37) provided as follows:

> The General Assembly shall never authorize the payment of extra compensation to any officer, public agent, or contractor, after the service shall have been rendered or the contract entered into, nor grant by appropriation or otherwise, any amount of money to any individual on any claim, real or pretended, when the same shall not have been provided for by pre-existing laws.

During the course of the debates, it was at various times moved "to strike out the whole section as it stands" (Debates, vol. I, p. 285); to amend the section "by striking out all after the word 'into' " (Debates, vol. II, p. 569); to insert the words "the subject matter of" (Debates, vol. II, p. 572); and to add the words "unless such claim be passed by a majority of two-thirds, in each branch of the General Assembly" (Debates, vol. II, p. 597). The last two amendments were adopted. No attempt was made at any time, however, to amend the first phrase of art. II, §29, as originally introduced.

Thus, the first phrase of art. II, §29 remained unchanged until five days before adjournment of the convention, at which time the Committee on Revision, Arrangement and Enrollment submitted its report on the "Legislative Department." Debates, vol. I, pp. 164, 284, 285; vol. II, pp. 319, 569-74, 578, 597, 633. The first phrase of art. II, §29, which had previously read "[t]he General Assembly shall never authorize the payment of any extra compensation. . . ," had been rewritten to read "[n]o extra compensation shall be made. . . ." Debates, vol. II, p. 597.

In light of the fact that the change in wording of the first phrase of art. II, §29 did not result from an amendment, but, rather, resulted from the action of the Committee on Revision, Arrangement and Enrollment, I concur in the opinion reached by my predecessor in 1939 Op. No. 1330 that the intent of the Constitutional Convention in adopting art. II, §29 must be determined from the record of the debates of the Convention.

An examination of the record of the debates of the Constitutional Convention of 1850-1851 reveals that in all of the debates on art. II, §29 only expenditures by and claims against the state were mentioned. Debates, vol. I, pp. 164, 285; vol. II, pp. 569, 571, 572. Thoughout the debates, art. II, §29 was considered only as a means of guarding the interest of the state by limiting the power of the General Assembly. Application of this section to political subdivisions was never discussed.

After an analysis of the debates of the constitutional convention, my predecessor, in 1939 Op. No. 1330, concluded as follows:

> [S]ince the change in the wording of this phrase was made by the "committee on Revision, Arrangement and Enrollment"; since the section in question was discussed and considered as a limitation on the legislative department of the state; and especially since in all the debates on this section only expenditures by and claims against the state were mentioned, the conclusion seems inescapable that Section 29 has no application to the political subdivisions of the state.

Id. at 1977.

In a recent line of unreported common pleas court cases, the opinion of my predecessor in 1939 Op. No. 1330 was cited with approval. Springfield Education Association v. Springfield City Board of Education, No. 75-CIV-1394 (C.P. Clark County Oct. 28, 1975); Ashtabula Area Education Association v. Ashtabula Area City School Board, No. 59406 (C.P. Ashtabula County 1972); Newton Falls Classroom Teachers Association v. Newton Falls Exempted Village School District Board of Education, No. 72 CI-544 (C.P. Trumbull County 1972). In all of the aforementioned cases, the courts were presented with the issue of whether art. II, §29 is applicable to boards of education. The courts, in those cases, uniformly held that the provisions of art. II, §29 are applicable only to the General Assembly of the state and not to political subdivisions of the state.

Indeed, to construe art. II, §29 in any other manner, given the plain language of that section, "unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly," would lead to an absurd result. If art. II, §29 were applicable to political subdivisions, then an act of the General Assembly would be required before any political subdivision could modify the compensation terms of any contract or award payment on any claim not founded in pre-existing law. As a practical matter, the General Assembly might well be deluged with requests from the various political subdivisons for approval of such actions. I am hard-pressed to conceive why the General Assembly should be involved in such contract modifications and claim awards, since they are purely local matters. In my opinion, the last line of art. II, §29, "unless such compensation, or claim be allowed by two-thirds of the members elected to each branch of the general assembly," further supports the conclusion that art. II, §29 applies only to the General Assembly of the state.

In light of the decisions rendered by the courts in the aforementioned cases and the record of the Debates of the Constitutional Convention of 1850-1951, I concur in the opinion reached by my predecessor in 1939 Op. No. 1330. In specific answer to your first and second questions, then, it is my opinion that Ohio Const. art. II, §29 is not applicable to political subdivisions such as municipalities, school districts, counties and townships and, therefore, does not prohibit the governing authorities of such subdivisions from granting retroactive pay increases to their employees.

In your third question you have inquired whether the governing authorities of municipalities, school boards, counties and townships have the statutory authority to grant retroactive pay increases to their employees. It is my understanding that your concern is whether such pay increases may be granted to "employees" of subdivisions as that term is commonly used, and not whether such pay increases may be granted to "officers" of the subdivisions. My response to your third

question, therefore, will address only whether retroactive pay increases may be granted to employees, and not whether such pay increases may be granted to officers. Since the authority granted to municipalities under Ohio Const. art. XVIII, §§3 and 7, is far greater than that granted to the governing authorities of school boards, counties and townships, I will discuss the two separately.

Pursuant to Ohio Const. art. XVIII, §§3 and 7, commonly known as the "home rule amendments," municipal corporations have extensive powers of local self-government. The authority of the governing body of a municipal corporation, usually the municipal council, to act is not limited to those powers expressly provided by statute. Rather, by virtue of the "home rule amendments," municipal corporations have authority to act in all matters of local self-government, except to the extent that such power has been limited by other constitutional provisions or by statutes enacted by the General Assembly pursuant to constitutional authorization. Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); Benjamin v. City of Columbus, 167 Ohio St. 103, 146 N.E.2d 854 (1957). In regard to municipal corporations, therefore, the question is not whether municipal corporations have the statutory authority to grant retroactive pay increases to their employees, but whether municipal corporations are prohibited or limited by constitution, statute, or their own local provisions from granting such pay increases.

I am not aware of any constitutional provision which prohibits a municipal corporation from granting retroactive pay increases. As I advised in answer to your first question, Ohio Const. art. II, §29 is not applicable to political subdivisions of the state. Similarly, as was discussed in 1973 Op. Att'y Gen. No. 73-063 and 1965 Op. Att'y Gen. No. 65-123, Ohio Const. art. II, §28, which contains a proscription on the passage of retroactive laws by the General Assembly, is not applicable to political subdivisions. Additionally, the granting of retroactive pay increases would not result in any unconstitutional taking of property. See 1964 Op. Att'y Gen. No. 780, p. 2-16. I must conclude, therefore, that there is no constitutional provision which prohibits a municipal corporation from granting a retroactive pay increase to its employees.

It remains to be determined whether the authority of a municipal corporation to grant such pay increases is in any way prohibited or limited by state statute. I am not aware of any state statute which may be construed as limiting the authority of the governing authority of a municipal corporation to grant retroactive pay increases to its employees.[2]

As previously discussed, municipal corporations have the authority to act in all matters of local self-government, except to the extent that such authority has been limited by constitutional or statutory provisions. It is well settled that the authority to determine the compensation to be paid to municipal employees is a power of local self-government. Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma, 61 Ohio St. 2d 375 (1980); State ex rel. Mullin v. Mansfield, 26 Ohio St. 2d 129, 269 N.E.2d 602 (1971). Consequently, in light of the fact that there is no constitutional or statutory provision which prohibits the governing authority of a municipal corporation from granting retroactive pay increases to its employees, it is my opinion that, in the absence of a local provision which in itself prohibits the granting of retroactive pay increases, the governing authority of a municipal corporation has the authority to grant retroactive pay increases to its employees.

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[2]There was concern at one time that R.C. 731.07 and R.C. 731.13, which then prohibited the salary of any officer, clerk or employee of a municipal corporation from being increased during his term of office, might prohibit the granting of a retroactive pay increase to a municipal employee. See 1973 Op. Att'y Gen. No. 73-063; 1965 Op. Att'y Gen. No. 65-123; 1964 Op. Att'y Gen. No. 780, p. 2-16. R.C. 731.07 and R.C. 731.13 have since been amended and now apply only to the in-term increase of the salary of a municipal officer. Therefore, R.C. 731.07 and R.C. 731.13 in no way restrict the granting of retroactive pay increases to municipal employees.

I turn now to a discussion of whether the governing authorities of counties (the board of county commissioners), townships (the board of township trustees), and school districts (the board of education) may grant retroactive pay increases to their employees.

In making such a determination, it must be recognized that the power and authority of such boards are limited. Boards of education, boards of county commissioners and boards of township trustees are creatures of statutes and as such have only those powers which are expressly granted by statute or necessarily implied therefrom. Schwing v. McClure, 120 Ohio St. 335, 166 N.E. 230 (1929); State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921); State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). Thus, in the absence of statutes which, either expressly or impliedly, authorize boards of education, boards of county commissioners and boards of township trustees to grant retroactive pay increases, it must be concluded that these boards have no authority to grant such pay increases.

Boards of education, boards of county commissioners and boards of township trustees have authority to fix the compensation of their respective employees. For example, R.C. 3319.08 requires boards of education to fix the compensation of teaching employees by contract and provides, in this regard, as follows:

> The board of education of each city, exempted village, local, and joint vocational school district shall enter into written contracts for the employment and reemployment of all teachers. . . . Such written contracts and supplemental written contracts shall set forth the teacher's duties and shall specify the salaries and compensation to be paid for regular teaching duties and additional teaching duties, respectively, either or both of which may be increased but not diminished during the term for which the contract is made, except as provided in section 3319.12 of the Revised Code. (Emphasis added.)

R.C. 3319.02 and R.C. 3319.081 similarly require boards of education to fix the compensation of administrative personnel and non-teaching employees by contract. R.C. 305.17 authorizes boards of county commissioners to "fix the compensation of all persons appointed or employed under section 305.13 to 305.16, inclusive, of the Revised Code."[3] Pursuant to R.C. 509.01, boards of township trustees "may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes." Pursuant to R.C. 511.10, boards of township trustees "may appoint such superintendents, architects, clerks, laborers, and other employees as are necessary and fix their compensation."

It is clear, then, that boards of education, boards of county commissioners and boards of township trustees have authority to fix the compensation of their employees. Compensation is generally thought of as recompense for services, the payment of an agreed upon amount for the rendition of services. See Webster's New World Dictionary 289 (2d college ed.). Retroactive compensation or a retroactive pay increase, on the other hand, as defined in my response to your first question, involves the payment of compensation in addition to that originally fixed or agreed upon for services which have already been rendered. The question which must be answered, then, is whether these boards have authority to increase the compensation of their employees and to pay such increased compensation retroactively.

In 1937 Op. Att'y Gen. No. 748, vol. II, p. 1354, my predecessor opined that the power to grant retroactive pay increases to teachers could not be implied from the language of G.C. 7690 and G.C. 7690-1 (the predecessors to R.C. 3319.08), which

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[3] R.C. 305.13-.16 authorize a board of county commissioners to employ a clerk, legal counsel, an engineer and such employees as are necessary for the care of the courthouse.

authorized boards of education to fix the salary and compensation of teachers.[4] In reaching this conclusion, my predecessor noted that the power of boards of education is strictly limited to that expressly authorized, or necessarily implied, by statute, and that any doubt as to the authority of the board to act must be strictly construed against the authority to so act. 1937 Op. No. 748 at 1357. See also State ex rel. Locher v. Menning, supra; State ex rel. Clarke v. Cook, supra. My predecessor further opined that the authority to fix compensation and the authority to increase compensation do not necessarily imply the authority to give retroactive effect to salary increases. On the basis of these facts, my predecessor concluded in 1937 Op. No. 748 that a board of education has no authority to increase the salary of a teacher and to make such increased salary retroactive to the beginning of the contract period or to any other prior point in time.

In 1976 Op. Att'y Gen. No. 76-015, I reached a similar conclusion in regard to the authority of a county engineer to grant retroactive pay increases to his employees.[5]

R.C. 325.17, which authorizes the county engineer to fix the compensation of his employees, provides, in pertinent part, as follows:

> The officers mentioned in section 325.27 of the Revised Code [includes the county engineer] may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. (Emphasis added.)

In Op. No. 76-015, I concluded that the language of R.C. 325.17, while clearly authorizing the county engineer to fix the compensation of his employees, does not authorize, either expressly or impliedly, "the payment of additional compensation retroactively for services already rendered and for which compensation has already been paid in accordance with previously existing wage rates." Op. No. 76-015 at 2-42. In reaching this conclusion, I reiterated the principle, stated by my predecessor in 1937 Op. No. 748, that creatures of statute, such as boards and county officers, have limited authority and any doubt as to their authority to expend public funds must be resolved against the authority to make such an expenditure.

Recent opinions rendered by various Ohio courts of common pleas, however, raise a question as to the continued validity of the conclusions reached in Op. No. 76-015 and 1937 Op. No. 748.

In several recent unreported common pleas court decisions, the courts were faced with the question of whether certain retroactive pay increases granted by boards of education were valid. See In re Brown Local Board of Education, No. 75-25437 (C.P. Brown County Aug. 19, 1975); Ashtabula Area Education Association v. Ashtabula Area School Board, No. 59406 (C.P. Ashtabula County 1972); Newton Falls Classroom Teachers Association v. Newton Falls Village School District Board of Education, No. 72 CI-544 (C.P. Trumbull County 1972). In each case, the board of education, prior to the expiration of the old contract term, had entered into an agreement with its teaching employees which provided that any salary increase

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[4]The conclusion reached in 1937 Op. No. 748, that boards of education could not grant retroactive pay increases to their employees, was also based on the assumption that Ohio Const. art. II, §29 was applicable to political subdivisions.

[5]The conclusion reached in Op. No. 76-015, that the county engineer could not grant retroactive pay increases to his employees, was also based upon the assumption that Ohio Const. art. II, §29 was applicable to political subdivisions.

finally agreed upon would be effective as of the commencement of the new contract term.

As was discussed in answer to your first question, the courts in each case held that Ohio Const. art. II, §29 was not applicable to political subdivisions and, therefore, did not prohibit the salary increases in question. In two cases, the courts expressly held that the agreements entered into would avoid the issue of retroactivity. Ashtabula, supra; Newton, supra.

Although in all of the aforementioned cases the courts upheld the validity of the pay increases, the courts did not discuss, in any of the cases, the statutory authority of boards of education to grant retroactive pay increases. The decisions of the courts in the foregoing cases appear to be based upon the theory that, in light of the agreements, no retroactive pay increases resulted, rather than upon the theory that school boards possess the statutory authority to grant retroactive pay increases to their employees.

As I discussed in 1976 Op. Att'y Gen. No. 76-047, when an agreement provides that any salary increase agreed upon will be effective as of the commencement of the contract term, no retroactive salary increase is involved. The agreement itself serves to fix the compensation of the employees as of the beginning of the term. In essence, pursuant to such an agreement, the compensation of the employees is set at an agreed upon amount, plus an unknown amount to be agreed upon at a later date. When the final salary schedule is agreed upon and the employees are paid the unknown amount, the employees are not receiving additional compensation for services already rendered, but rather, are receiving the amount which was originally agreed upon, although the amount was unknown at the time of the agreement. Thus, when such an agreement is entered into prior to the expiration of the old contract term, no retroactive salary increase is involved. For this reason, I am of the opinion that the decisions in the foregoing cases do not in any way undermine the conclusions reached in Op. No. 76-015 and 1937 Op. No. 748.

The decisions rendered by the courts of common pleas in three recent cases, however, clearly conflict with the conclusions reached in Op. No. 76-015 and 1937 Op. No. 748. Koch v. Kapp, No. 77-CIV-183 (C.P. Wood County Sept. 6, 1977); Springfield Education Association v. Springfield City Board of Education, No. 75-CIV-1394 (Clark County Oct. 28, 1975); Fairless Education Association v. Fairless Local Board of Education, No. 73-506 (C.P. Stark County March 1, 1974).

In Koch, Springfield and Fairless, no agreements similar to the ones entered into in Brown, Ashtabula and Newton were entered into by the boards of education and their teaching employees. In Koch, the salary schedule which was adopted in June, 1977 was made retroactive to January, 1977. In Springfield, the salary schedule which was adopted in September, 1975 was made retroactive to January, 1975. In Fairless, the salary schedule adopted in May, 1972 was made retroactive to March, 1972. The courts in all of the above-mentioned cases held that Ohio Const. art. II, §29 was inapplicable to political subdivisions and upheld the authority of the boards of education to grant the proposed retroactive pay increases.

In upholding the proposed retroactive pay increase, the court in Springfield stated that "[t]he court finds, as a matter of law, that there is no restriction on a board of education with regard to the payment of retroactive pay." The court in Koch, in reaching its decision, interpreted the decision of the court in Newton, where a prior agreement had been entered into, as follows: "It is true that in the Newton Falls case, supra, the Court did indicate that the issue of retroactivity could be avoided on the basis of an agreement. But since such statement followed the Court's decision that the Constitutional sections were inapplicable, it must be considered dicta." The express statements of the courts in Springfield and Koch, coupled with the fact that the courts upheld the pay increases in the absence of prior agreements, clearly indicate that the courts were of the opinion that, once the constitutional prohibitions are found to be inapplicable, there is no question as to the authority of boards of education to grant retroactive pay increases to their

employees. In light of the decisions of the courts in Springfield, Koch and Fairless, and in the absence of any recent case law authority to the contrary, I am compelled to conclude that boards of education possess the authority to grant retroactive pay increases to their employees.

Having concluded that boards of education possess the authority to grant retroactive pay increases to their employees, I can find no sound basis for concluding that boards of county commissioners and boards of township trustees lack the authority to grant similar pay increases. Rather, on the basis of the courts' decisions in Springfield and Koch, I conclude that the authority of boards of county commissioners and boards of township trustees to grant retroactive pay increases to their employees is implicit in the authority to fix the compensation of their employees. It is, therefore, my opinion that boards of county commissioners and boards of township trustees, as well as boards of education, possess the authority to grant retroactive pay increases to their employees.

In conclusion, then, it is my opinion, and you are so advised, that:

1. Ohio Const. art. II, §29 is not applicable to political subdivisions such as municipalities, school districts, counties and townships and, therefore, does not prohibit the governing authorities of such subdivisions from granting retroactive pay increases to their employees. (1939 Op. Att'y Gen. No. 1330, vol. III, p. 1966; 1937 Op. Att'y Gen. No. 585, vol. I, p. 1015; 1930 Op. Att'y Gen. No. 2398, vo. II, p. 1524 approved and followed. 1976 Op. Att'y Gen. No. 76-015; 1975 Op. Att'y Gen. No. 75-048; 1938 Op. Att'y Gen. No. 3517, vol. III, p. 2471; 1937 Op. Att'y Gen. No. 748, vol. II, p. 1354; 1933 Op. Att'y Gen. No. 1981, vol. III, p. 1891; 1919 Op. Att'y Gen. No. 45, vol. I, p. 66 overruled to the extent that they are inconsistent with this opinion.)

2. In the absence of a local provision which prohibits the granting of retroactive pay increases, the governing authority of a municipal corporation may grant retroactive pay increases to municipal employees. (1973 Op. Att'y Gen. No. 73-063; 1965 Op. Att'y Gen. No. 65-123; 1964 Op. Att'y Gen. No. 780, p. 2-16 modified to the extent that they are inconsistent with this opinion.)

3. Boards of education, boards of county commissioners and boards of township trustees possess the authority to grant retroactive pay increases to their employees. (1937 Op. Att'y Gen. No. 748, vol. II, p. 1354 overruled.)