OPINION NO. 83-004

Syllabus:

1. A deputy director of a state department, appointed pursuant to R.C. 3.06 and 121.05, is not an officer for purposes of Ohio Const. art. II, §4.

2. A member of the General Assembly who served a term during which the pay ranges in Schedule C of R.C. 124.15(A) were increased may constitutionally be appointed as the director of a state department pursuant to R.C. 121.03 within one year of that term, provided that individual does not, as director, receive compensation in excess of the maximum amount of compensation which was authorized for a Schedule C position immediately prior to the term of the legislator during which the amendment to R.C. 124.15(A) was enacted.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, January 28, 1983

I have before me your letter asking whether the appointment of a person who served in the 114th General Assembly to the position of director or deputy director of a state department created pursuant to R.C. 121.02 would violate Ohio Const. art. II, §4.

Ohio Const. art. II, §4, provides in relevant part:

> No member of the general assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected.

Your question arises from the fact that the biennial appropriation act adopted by the 114th General Assembly, Am. Sub. H.B. 694 (1981-1982) (eff. Nov. 15, 1981), contained, among other provisions, increases in the upper and lower limits of the pay ranges within which directors and deputy directors of state departments are paid. Your specific question is as follows:

> In light of the prohibition contained in the second paragraph of Article II, Section 4 of the Ohio Constitution and the provisions of Am. Sub. H.B. 694, may an individual who served as a legislator during the 1981-1982 session of the Ohio General Assembly lawfully be appointed to the position of director or deputy director of a state department within one year following his term as legislator?

Let me note, at the outset, that I do not believe that a deputy director is an officer for purposes of Ohio Const. art. II, §4. The word "officer," as used in Ohio Const. art. II, §4 and its predecessor, Ohio Const. art. II, §19, has been consistently construed as applying to a position in which an individual is given independent and continuing duties which involve the exercise of some portion of the sovereignty of

the state. E.g., 1950 Op. Att'y Gen. No. 1787, p. 297 (the chief of a division of the Department of Natural Resources is an officer for purposes of Ohio Const. art. II, §19); 1939 Op. Att'y Gen. No. 134, vol. I, p. 155 (a person chosen by members of a commission to serve as director of the commission is not an officer for purposes of Ohio Const. art. II, §19); 1933 Op. Att'y Gen. No. 1012, vol. II, p. 1026 (the executive secretary of the milk commission is an officer for purposes of Ohio Const. art. II, §19); 1931 Op. Att'y Gen. No. 3476, vol. II, p. 1032 (a member of the board of parole is an officer for purposes of Ohio Const. art. II, §19); 1927 Op. Att'y Gen. No. 850, vol. II, p. 1504 (a special institutional examiner is an officer for purposes of Ohio Const. art. II, §19). See also 3 Ohio Constitutional Revision Commission 1970-1977, 1148-1153 (1971). Absent statutory provisions specifically authorizing the appointment of a deputy director of a particular department, a deputy director is appointed pursuant to R.C. 3.06 (governing deputies in general) and R.C. 121.05 (authorizing a director to designate his assistant director or a deputy director to serve in his place on a board or commission). See 1977 Op. Att'y Gen. No. 77-064. Pursuant to these provisions, a deputy has no independent duties but, rather, is subject to the control of the director. Therefore, he is not an "officer" as that term is used in Ohio Const. art. II, §4. See generally 1980 Op. Att'y Gen. No. 80-065 (concluding that the Deputy Auditor and deputy inspectors are not officers for purposes of R.C. Chapter 121); 1979 Op. Att'y Gen. No. 79-111 (a deputy sheriff is not a public officer for purposes of R.C. 731.02); 1970 Op. Att'y Gen. No. 70-035 (taking an oath and giving bond does not make a deputy sheriff an officer); 1964 Op. Att'y Gen. No. 879 (mere employment is not prohibited under Ohio Const. art. II, §4). See also R.C. 3.22 (requiring oath both of officer and each deputy of such officer). For this reason, I conclude that the provisions of Ohio Const. art. II, §4 are not applicable to a deputy director.

There is, however, no question but that the director of a state department created by R.C. 121.02 is an officer, since he is clearly so designated by statute. R.C. 121.03 (describing position as an office); R.C. 121.11 (requiring an oath and bond of certain officers, including such directors); R.C. 121.12 (providing that such an officer shall devote his entire time to his duties and shall hold no other office or position of profit).

In order to determine how the provisions of Ohio Const. art. II, §4 should be applied to the director of a state department, it is necessary to examine the provisions under which such persons are compensated.

Pursuant to Ohio Const. art. II, §20, in cases not provided for in the Constitution, the General Assembly is authorized to fix the term of office and the compensation of all officers; such authority extends to directors of state departments. The General Assembly has, by statute, established an administrative scheme for setting the compensation of most state officers and employees, including directors of state departments. R.C. 124.14(A) states:

> The director of administrative services with the approval of the state employee compensation board[1] shall establish, and may modify or repeal, by rule a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state. The director shall group jobs within a classification so that the positions are similar enough in duties and responsibilities to be described by the same title, to have the same pay assigned with equity, and to have the same qualifications for selection applied. However, the director and the board shall consider in establishing classifications, including classifications with parenthetical titles, and assigning pay ranges such factors as duties performed only on one shift, special skills in short supply in the labor market, recruitment problems, separation rates, comparative salary rates, the amount of training required, and other conditions affecting employment. The

[1]The State Employee Compensation Board, established by R.C. 124.16, consists of the Director of Administrative Services, Director of Budget and Management, Auditor of State, a member of the House designated by the Speaker, and a member of the Senate designated by the President.

> director shall describe the duties and responsibilities of the class and establish the qualifications for being employed in that position; and shall file with the secretary of state a copy of specifications for all of the classifications. New, additional, or revised specifications shall be filed with the secretary of state before being used. The director with the approval of the board shall by rule assign each classification, either on a statewide basis or in particular counties or state institutions, to a pay range established under section 124.15 of the Revised Code. The director with the approval of the board may assign a classification to a pay range on a temporary basis for a period of time designated in the rule. (Emphasis and footnote added.)

R.C. 124.14(B) sets forth certain exceptions from the general applicability of R.C. 124.14(A); none of those exceptions are applicable in the instant case. R.C. 124.15 sets forth the various pay ranges to which job classifications may be assigned. Pursuant to this statutory scheme, the Director of Administrative Services, with the approval of the State Employee Compensation Board, is to establish job classifications describing the duties and responsibilities of the different classes of director of a state department and to assign those classifications to the pay ranges established under R.C. 124.15. See [1982-83 Monthly Record] Ohio Admin. Code. 123:1-7-03 at 9 (setting forth job classification plan criteria).

[1981-82 Monthly Record] Ohio Admin. Code 123:1-7-11 governs the classification of directors of state departments. It provides, in part, as follows:

> The director may assign positions within state agencies, boards, commissions, and county welfare agencies into the appropriate classification in the managerial and professional division of the classification plan as set forth herein:

PAY RANGE	CLASSIFICATION NUMBER	DESCRIPTION
	60000	MANAGERIAL AND PROFESSIONAL DIVISION
	61000	EXECUTIVE BRANCH
	61100	DIRECTOR GROUP
46	61111	Director 1
47	61112	Director 2
48	61113	Director 3
49	61114	Director 4

Id. at 468.

Pay ranges 41 through 49 appear in Schedule C of R.C. 124.15(A), as follows:

SCHEDULE C

RANGE		PAY RANGE AND VALUES MINIMUM	MAXIMUM
41	HOURLY	10.44	14.97
	ANNUALLY	21715.20	31137.60
42	HOURLY	11.51	16.52
	ANNUALLY	23940.80	34361.60
43	HOURLY	12.68	18.21
	ANNUALLY	26374.40	37876.80
44	HOURLY	13.99	19.88
	ANNUALLY	29099.20	41350.40
45	HOURLY	15.44	21.71
	ANNUALLY	32115.20	45156.80
46	HOURLY	17.01	23.71
	ANNUALLY	35380.80	49316.80

47	HOURLY	18.75	25.89
	ANNUALLY	39000.00	53851.20
48	HOURLY	20.67	28.28
	ANNUALLY	42993.60	58822.40
49	HOURLY	22.80	30.53
	ANNUALLY	47424.00	63502.40

R.C. 124.15(H) provides:

> Employees in appointive managerial or professional positions paid under salary schedule C. . .may be appointed at any rate within the appropriate pay range. This rate of pay may be adjusted higher or lower within the respective pay range at any time the appointing authority so desires as long as the adjustment is based on the individual's ability to successfully administer those duties assigned to him.[2] Salary adjustments shall not be made more frequently than once in any six-month period under this provision to incumbents holding the same position and classification. (Footnote added.)

Thus, under existing provisions, the position of director of a state department is assigned to the appropriate job classification which, in turn, is assigned to a particular pay range. The appointing authority—in this case, the Governor, acting under R.C. 121.03— has discretion to choose any amount of compensation within the appropriate pay range.

It is not immediately apparent how the relevant portion of Ohio Const. art. II, §4, quoted above, is to be applied to the existing administrative scheme for setting salaries. That language, derived from former art. II, §19,[3] was clearly aimed at a situation in which a member of the legislature would use his political power to either create a position or raise the compensation of an existing position and

---

[2]The authority to adjust the rate of pay of individuals classified as officers would appear to be limited by Ohio Const. art. II, §20, which states:

> 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.

See, e.g., 1973 Op. Att'y Gen. No. 73-131 (a member of the Environmental Board of Review is a public officer within the meaning of Ohio Const. art. II, §20 and is not entitled to a pay raise under a bill enacted during his term); 1972 Op. Att'y Gen. No. 72-054 (a member of the Public Utilities Commission is a state officer whose salary may not be changed during his existing term of office). I note, however, that a person who serves at the pleasure of the appointing authority does not hold office during an "existing term" within the meaning of Ohio Const. art. II, §20, and, thus, is not subject to this prohibition. 1957 Op. Att'y Gen. No. 176, p. 22 (syllabus, paragraph one). See Mellinger v. State ex rel. Spagnola, 16 Ohio L.Abs. 3 (Ct. App. Mahoning County 1933) (interpreting statute similar to art. II, §20 with regard to municipal officers).

[3]Ohio Const. art. II, §19 was repealed on May 8, 1973, upon the incorporation of a similar provision as paragraph two of art. II, §4. Art.II, §19 stated:

> No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected.

arrange to be appointed to the position to reap the benefits of his political maneuverings.[4] See, e.g., 1927 Op. No. 850 at 1509-10 (quoting from the debates in the Constitutional Convention of 1850-51).

It has, in the past, been common for the General Assembly to set the salaries of the various directors by statutory enactment, either by prescribing exact salary figures or by assigning particular positions to pay ranges for which exact figures were set by statute.[5] The existing statutory scheme, involving the variable pay ranges of Schedule C of R.C. 124.15(A) and the discretion of the appointing authority to select a figure within the applicable range, has been in effect only since 1975. See 1975-1976 Ohio Laws 1603, 1613-14, 1617 (Am. Sub. H.B. 155, eff. June 29, 1975).

If I were considering a situation in which the General Assembly, by statute, designated the salary which a director would receive, the application of art. II, §4 would be clear: a legislator could not accept a position as director during the term for which he was elected, or for one year thereafter, if the General Assembly, during that term, increased the compensation of the position. The application of art. II, §4 to the existing statutory scheme is, however, not so simple.

Under the existing scheme governing payment of directors, the General Assembly sets the pay ranges of R.C. 124.15, but it is the Director of Administrative Services, with the approval of the State Employee Compensation Board, who establishes the job classification for a particular director's position and who assigns that classification to a particular pay range. The job classifications and assignments to pay ranges are established by rule and may be changed from

---

[4]Ohio Const. art. II, §4 is rooted in art. I, §20 of the Constitution of Ohio, 1802, which stated:

> No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during such time.

At that time, the General Assembly had authority to provide for the appointment of all civil officers not otherwise provided for in the Constitution. Art. VI, §4 of the Constitution of Ohio, 1802 ("[t]he appointment of all civil officers, not otherwise directed by this constitution, shall be made in such manner as may be directed by law"). Thus, this provision served to prevent the members of the General Assembly from appointing themselves to state offices. See generally Final Report, Ohio Constitutional Revision Commission 1970-1977, 39 (June 30, 1977).

[5]The General Assembly has used several different methods for establishing the salaries of directors of state departments. For example, R.C. 141.03, as amended in 1963 Ohio Laws 83 (Am. Sub. H.B. 270, eff. June 11, 1963), specifically designated dollar amounts as the annual salaries for the various directors. E.g., id. at 83 ("Director of agriculture, fourteen thousand dollars"). R.C. 143.09 and 143.10, as set forth in 1967-68 Ohio Laws, vol. I, 124-151, 153-158 (Am. Sub. H.B. 93, eff. May 17, 1967), assigned a classification number to each director position and specified the pay range which was applicable; while some pay ranges had more than one salary step, the pay ranges to which department director positions were assigned prescribed a single figure as salary. E.g., id. at 130, 155 (assigning Director of Agriculture (classification number 1903) to pay range 45, with an annual salary of $24,960). The applicable provisions of R.C. 143.09 and 143.10, contained in 1971-1972 Ohio Laws, vol. I, 240 at 246, 273 (Am. Sub. S.B. 147, eff. Jan. 20, 1972), assigned the various director positions to pay ranges which included three salary steps; R.C. 143.10(E) and (G) provided generally for advancement from one step to the next and for initial employment at a step higher than the minimum in certain circumstances.

time to time. R.C. 124.14(A). Further, the Governor, in appointing a particular director, selects a particular salary within the appropriate range. R.C. 124.15(H). See also R.C. 124.04(E) (authorizing the Director of Administrative Services "[t]o allocate and reallocate upon his own motion or upon request of an appointing authority and in accordance with section 124.14 of the Revised Code, any position, office, or employment in the state service to the appropriate classification on the basis of the duties, responsibilities, requirements, and qualifications of such position, office, or employment").

Some insight as to the proper application of art. II, §4 may be gained from cases dealing with related constitutional provisions. In State ex rel. Mack v. Guckenberger, 139 Ohio St. 273, 39 N.E.2d 840 (1942), and State ex rel. Edgecomb v. Rosen, 29 Ohio St. 2d 114, 279 N.E.2d 870 (1972), the Ohio Supreme Court addressed statutory schemes providing for increases in compensation. In Guckenberger, the court considered a statute which provided for an automatic increase in compensation during the term of a judge by reason of an increase in population and which was in effect before the commencement of the judge's term. The court concluded that the statute did not conflict with the provisions of Ohio Const. art. IV, §14, which provided that the compensation of judges "shall not be diminished, or increased, during their term of office." In Rosen, the court considered a statute which provided for an increase in the salary of a clerk of courts based upon an increase in the judge's salary and decided that application of the statute during the clerk's term would violate Ohio Const. art. II, §20, which prohibits a change in compensation of an officer during his existing term.

The constitutional provisions considered in those cases are different from the one here under consideration, but the cases are nonetheless instructive. Although art. IV, §14 spoke passively of compensation not being diminished or increased, the court stated in Guckenberger that the prohibition was clearly aimed at the legislature. Guckenberger, 139 Ohio St. at 279, 282, 39 N.E.2d at 844, 845. The same conclusion is applicable to art. II, §4. The court in Guckenberger also outlined the purpose of the prohibition against a change in compensation of a judge, stating "that the judge is precluded from using his personal influence or official action to have the Legislature increase his salary. . .but there is no inhibition against the Legislature fixing such compensation before the term begins on a basis which may vary it in amount as time advances, provided that basis. . .is fixed, certain and unchangeable during his term." Id., 139 Ohio St. at 278, 283, 39 N.E.2d at 843, 845. That purpose is analogous to the purpose behind art. II, §4. See also 1980 Op. Att'y Gen. No. 80-002 (overruled in part by 1981 Op. Att'y Gen. No. 81-099). The court in Rosen distinguished the Guckenberger case on the basis that there the salary increase happened automatically upon a population increase, whereas in the situation in Rosen an act of the General Assembly increasing a judge's salary was a condition precedent to an increase in the clerk's salary.

The Guckenberger and Rosen cases thus illustrate that, where a constitutional provision prohibits a change in salary, the Ohio Supreme Court has concluded that the evil sought to be addressed is not the change in salary itself, but rather legislative action which brings about the change in salary. As my immediate predecessor stated, considering these and related constitutional provisions: "The principal mischief at which [constitutional provisions imposing limitations upon changes in the compensation to be paid to public officers are] aimed is the potential for an officeholder to abuse his official powers by bringing improper influence to bear on those who determine his compensation." Op. No. 80-002 at 2-8. It is evident that the opportunity for legislative manipulation of the salary of a director of a state department was markedly reduced by the adoption of the statutory scheme which brought those directors within Schedule C of R.C. 124.15.

In attempting to apply art. II, §4 to the instant situation, it is necessary to determine just what is meant by the "compensation" of the director of a state department. I am not aware of any authority which has defined the term "compensation" as used in art II, §4. The term has, however, been construed in other constitutional provisions to mean the number of dollars payable to a public officer. State ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (construing "compensation" as used in Ohio Const. art. II, §20); State ex

rel. Boyd v. Tracy, 128 Ohio St. 242, 253, 190 N.E. 463, 468 (1934) (construing "compensation" as used in art. II, §31: "the whole question being, 'Can the number of dollars payable to an incumbent of a public office be increased by the enactment of a statute during his term of office?' "). See State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976) (compensation includes fringe benefits); 1980 Op. Att'y Gen. No. 80-050 (Ohio Const. art. II, §20 prohibits an increase in the number of dollars actually paid); 1979 Op. Att'y Gen. No. 79-102 (Ohio Const. art. II, §20 prohibits an in-term increase in per diem payments to board of health members). More recently, the Court of Appeals of Franklin County held that, for purposes of Ohio Const. art. II, §20, the compensation of an officeholder was not increased where the officeholder "received absolutely no increased benefits." Collins v. Ferguson, No. 80AP-245 (Ct. App. Franklin County July 22, 1980). See Op. No. 81-099 (overruling in part Op. No. 80-002 and overruling 1976 Op. Att'y Gen. No. 76-058). Thus, the word "compensation," as used in the Ohio Constitution, has been construed as relating to benefits actually received by an individual. Where the benefits received have not changed, there has been no increase in compensation.

In my opinion, the reasonable application of Ohio Const. art. II, §4, to the situation here under consideration is that, when a former legislator is appointed as a director whose compensation is set by Schedule C of R.C. 124.15(A), no increase in compensation takes place (even though the pay range values of Schedule C have been amended) so long as the compensation of the legislator does not exceed the maximum amount of compensation which was authorized for a Schedule C position immediately prior to the term of the legislator. Such an interpretation is essential to give "our Constitution and statute what seems to be a reasonable construction." Guckenberger, 139 Ohio St. at 286, 39 N.E.2d at 845 (finding that art. IV, §14 permits a statutory scheme which provides for automatic compensation increases to judges upon changes in population). See 1978 Op. Att'y Gen. No. 78-054 at 2-134 ("[i]n construing a provision of the constitution, the primary objective is to effectuate the intended result").

The General Assembly, by enactment of R.C. Chapter 124, has delegated to the Director of Administrative Services the power to establish the range of compensation of the officers here under consideration. The action taken by the Director of Administrative Services to place the positions in classifications and assign them to pay ranges is performed pursuant to this authority. An appointee is eligible for any amount within the appropriate pay range, subject only to a determination by the appointing authority pursuant to R.C. 124.15(H). It is clear that, without any action by the General Assembly and without further action by the Director of Administrative Services pursuant to his statutorily-delegated authority, a director may receive any amount of compensation within the appropriate range. Moreover, without any action by the General Assembly, the Director of Administrative Services may change the pay range of a particular director to the maximum range authorized by statute for a Schedule C position. The discretion in the appointing authority to prescribe the precise figure and the discretion in the Director of Administrative Services to change the pay range, while part of the overall administrative scheme for establishing salaries, are not subject to direction by the General Assembly. Any change in compensation made pursuant to such authority would, therefore, not run afoul of the prohibition contained in art. II, §4, since such prohibition, while stated passively ("the compensation was increased") is, as discussed above, clearly directed at action by the legislature.

The situation is analogous to one considered in 1978 Op. Att'y Gen. No. 78-054, wherein my predecessor concluded that a township trustee who was entitled to participate in a group health insurance plan when his term began but declined to do so could choose to participate at a later date without violating art. II, §20, even though the actual benefits he would receive would thereby increase during his term. That opinion stated: "The officeholder should not be penalized for declining insurance which was properly available to him at the beginning of his term. Indeed, the officeholder is asking for nothing more than would have been available to him all along." Id. at 2-134. I find, similarly, that even though there has been legislation amending R.C. 124.15, there is no increase in compensation in violation of Ohio Const. art. II, §4 where a former legislator serving as a director receives

only what the director could have received, in the discretion of the appointing authority and the Director of Administrative Services, immediately prior to the beginning of the individual's term as legislator.

A question similar to the one you have raised was considered by the Supreme Court of Utah in Shields v. Toronto, 16 Utah 2d 61, 395 P.2d 829 (1964). That case concerned the question whether legislators who had participated in enacting a general salary increase bill were thereby rendered ineligible to seek elective office under a constitutional provision stating:

> No member of the Legislature, during the term for which he was elected, shall be appointed or elected to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

Id., 16 Utah 2d at 62, 395 P.2d at 830. The court concluded that the individuals in question were not ineligible for elective office, stating that the "obvious purpose [of the provision] was to guard against dishonesty or improper connivance by or with legislators and to prevent them from being influenced by ulterior schemes to enrich themselves at the expense of the public treasury by creating or increasing the pay of a public office and then taking advantage of it," id., 16 Utah 2d at 63, 395 P.2d at 830 (footnote omitted), and concluding that "there appears to be no good reason to carry this provision beyond that purpose and make an unreasoning application of it where no such evil, nor any possibility of it exists." Id., 16 Utah 2d at 63-64, 395 P.2d at 830. The court determined that the salary increases involved "could not by any stretch of the imagination be regarded as partaking of the impropriety" to which the provision was addressed because they were part of a bill aimed primarily at consolidating and classifying various salary provisions and because the comparatively small increases (about 5%) were merely incidental to the main purpose of the bill. Id., 16 Utah 2d at 64, 395 P.2d at 831. Considering the provision in light of its history and purpose, and in light of other fundamental rights of citizens under the Constitution, the court concluded that a literal and rigid interpretation of the provision was inappropriate.

Shields v. Toronto was approved and followed in Jenkins v. Jensen, 632 P.2d 858 (Utah 1981). The court in Jenkins v. Jensen construed the same provision which was at issue in Shields v. Toronto and found that the individual in question was eligible to run for office. The court focused on the fact that two salary increases granted during his term as legislator were part of general raises designed to keep up with inflation and on the fact that there was no hint of any ulterior scheme or connivance by the legislator.

Ohio Const. art. II, §4 is, in material respects, very similar to the provision considered in Shields v. Toronto and Jenkins v. Jensen. Moreover, I find support in these cases for the concept that the language of art. II, §4 should be given the reasonable interpretation outlined herein, in order to make the provision applicable to the evil which it was intended to prevent. See State ex rel. West v. Gray, 74 So.2d 114, 119 (Fla. 1954) (advocating a reasonable and common-sense legal approach to the question whether a legislator who held office when the legislature enacted a temporary increase in the governor's salary (which would expire prior to the end of the term) could become a candidate for the unexpired term upon the death of the governor; the court concluded that the legislator was eligible, the per curiam opinion stating that no possible charge of bias or self-interest could be made and that there was no increase in the emoluments of the office "within the spirit and intent" of the applicable constitutional prohibition); State ex rel. Grigsby v. Ostroot, 64 N.W.2d 62, 75 S.D. 319 (1954) (construing a constitutional provision, which prohibited a legislator from election to certain positions if the emoluments of such positions were increased during his term as legislator, in light of historical changes in order to effect the intent and purpose of the provision).

Throughout this discussion, I have assumed that the phrase, "term for which he was elected," which appears twice in the paragraph of art. II, §4 here under consideration, applies to a single legislative term. To expand the concept of a

"term" to include more than one period for which the individual was elected would violate the express language of the provision. Further, it would lead to unreasonable consequences, since, for example, if "term" were read to encompass a number of consecutive terms, a legislator who had served for a number of such terms would be restricted for a year after his final term by increases passed during prior terms, whereas if no increase had occurred during the term immediately past, a single term legislator would suffer no restrictions. For these reasons, it is my opinion that the language of art. II, §4 here under consideration applies to each single term for which a legislator is elected. See generally Student Public Interest Research Group of New Jersey v. Byrne, 86 N.J. 592, 599, 432 A.2d 507, 510 (1981) ("[t]hat the disqualifying event must have occurred 'during such term' means only that it must. . .take place during the legislator's current term of office—that is, an increase enacted in a legislator's prior term would not render him forever ineligible").

I note, further, that an action by the General Assembly to provide across-the-board increases for the pay ranges set forth in R.C. 124.15 is clearly not the sort of evil at which Ohio Const. art. II, §4 was aimed. Such an action affects all employees and officers who fit within the pay ranges so adjusted; it is not susceptible to political manipulation by a legislator who wishes to benefit a particular position to which he desires appointment. See R.C. 124.14 (requiring the Director of Administrative Services to report biennially to the State Employee Compensation Board whether the pay ranges set forth in R.C. 124.15 "should be adjusted by a uniform percentage to reflect increases or decreases in the wages of nonpublic employees" and, similarly, whether fringe benefits should be adjusted).[6] See also Shields v. Toronto, supra.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. A deputy director of a state department, appointed pursuant to R.C. 3.06 and 121.05, is not an officer for purposes of Ohio Const. art. II, §4.

2. A member of the General Assembly who served a term during which the pay ranges in Schedule C of R.C. 124.15(A) were increased may constitutionally be appointed as the director of a state department pursuant to R.C. 121.03 within one year of that term, provided that individual does not, as director, receive compensation in excess of the maximum amount of compensation which was authorized for a Schedule C position immediately prior to the term of the legislator during which the amendment to R.C. 124.15(A) was enacted.

---

[6]The "What's Left Committee" of the Ohio Constitutional Revision Commission, see Final Report, Ohio Constitutional Revision Commission 1970-1977, 18 (June 30, 1977), has advanced the position that the second paragraph prohibition of art. II, §4 was clearly not intended to apply to cost of living increases. It stated:

> The Committee believes that the original intent of the constitutional language was to prevent the general assembly from creating offices and appointing themselves to them, or granting themselves or political allies higher salaries by assuming those offices. Nowhere in the history of former Section 19 does it appear to be the intent of lawmakers to prevent a person from assuming a public office with a higher salary, when the salary of the office has increased as a result of inflation or other economic factors, as opposed to political manipulation.

10 Ohio Constitutional Revision Commission 1970-1977, 5242 (Feb. 7, 1977).