

**AUDITOR OF STATE BULLETIN 99-015**  
**SEPTEMBER 15, 1999**

TO: ALL COUNTY AUDITORS  
ALL COUNTY TREASURERS  
ALL COUNTY SHERIFFS  
ALL COUNTY CLERKS OF COURTS  
ALL COUNTY RECORDERS  
ALL COUNTY COMMISSIONERS  
ALL COUNTY PROSECUTING ATTORNEYS  
ALL COUNTY ENGINEERS  
ALL COUNTY CORONERS  
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: IN-TERM WAGE INCREASES FOR COUNTY OFFICIALS

The purpose of this bulletin is to inform county authorities of Ohio Attorney General Opinion 99-033. This opinion addressed the issue of in-term salary increases for county officials whose salaries are based upon population-driven compensation schedules contained within the Ohio Revised Code. The Attorney General concluded that when a county's population increases, as measured by the federal decennial census, an in-term county official may lawfully receive the higher salary provided for by the consequent shift in that official's compensation schedule.

The Attorney General was asked to opine on this issue because Ohio law contains certain prohibitions with respect to in-term changes in salary for county officers. Chiefly, Ohio Const. art. II, § 20, provides that the General Assembly "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." The operative word interpreted by the Attorney General was "change."

Relying heavily upon *Shultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983), the Attorney General interpreted "change" to mean changes in salary caused by direct legislative action upon the compensation schedules contained in the Ohio Revised Code that act as the bases for the county officers' salaries. In other words, the Ohio Constitution prohibits the legislature from effecting a change in an in-term officer's salary by changing the underlying statute upon which the officer's salary is based. The Constitution does not perfunctorily prohibit a change in the salary of an in-term county officer. As long as the statute containing the compensation schedule was in effect prior to the commencement of an officer's term of office and the statute provides for a change in salary commensurate with a change in population, a county officer may receive an in-term increase in salary.

In the case of a county auditor, county treasurer, county sheriff, common pleas court clerk, county recorder, county commissioner, county prosecuting attorney, county engineer, or county coroner, their respective salaries are set forth in the compensation schedules contained in Ohio Revised Code Chapter 325. A particular officer's salary is determined by selecting the

appropriate compensation schedule which is based on the county's population. Generally, the greater the county's population, the greater the officers' salaries will be. Although there is no constitutional prohibition against an in-term salary increase for these officers when the county's population grows, there does exist a statutory bar in Ohio Revised Code § 325.22 that prohibits reducing their salaries in-term when the population of the county decreases.

The Attorney General also addressed the attendant issue of the proper index of population data to be used in determining the correct compensation schedules at which to set county officers' salaries. The Attorney General concluded that the only index of population recognized by the Ohio Revised Code is the federal decennial census. The Ohio Revised Code defines "population" to mean that enumeration of persons as shown by the most recent regular federal census. In examining federal censuses, the Attorney General found four types: a decennial census, a mid-decade census, a special census, and a compilation of current population data. The opinion ruled out current compilations of data because they are based on estimations and not on hard enumerations. Special censuses were also discounted because they are discretionary and therefore not "regular" in nature. Even though a mid-decade census was found to fall within the definition of a regular federal census, the Attorney General discovered that as a practical matter, no mid-decade census had ever been conducted. That left the federal decennial census as the appropriate population index to use within the compensation schedules.

Therefore, according to the Attorney General's opinion, those counties that experience an increase in population may lawfully adjust the salaries of those in-term officers whose salaries will be increased by a change in their compensation schedules. Where the federal decennial census indicates a decrease in county population, however, there should be no consequent decrease in an in-term officer's compensation.

If you have any questions about this bulletin, please contact the Legal Division at 1-800-282-0370 or (614) 752-8683.