

THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 00-004
May 25, 2000

Syllabus by the Committee:

The mileage rate set forth in amended R.C. 101.27 is not an in-term increase in a member's compensation.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members and employees of the General Assembly on the following questions: May the amount of mileage reimbursement be increased during a member's term?

Background

On November 21, 1996, the Committee released Advisory Opinion 96-006 regarding the mileage provided to members of the General Assembly traveling to Columbus. The Syllabus in Advisory Op. 96-006 read as follows:

- (1) A member may accept the mileage allowance as provided for in R.C. 101.27 as part of the member's legislative compensation;
- (2) A member's mileage allowance may not be increased during his or her term of office;

- (3) A member may accept a mileage allowance after sharing a ride to Columbus or when the member is already present in Columbus;
- (4) A member may accept a mileage allowance for traveling to Columbus to conduct legislative business other than attendance at a floor session; and
- (5) A member may not accept a mileage allowance for a week where the member, unless excused, is not present in Columbus.

Consideration of the Issues

This Committee previously held that the mileage allowance provided for in R.C. 101.27 was part of the member's fixed compensation and was not actual an "allowance" even though that term was used in the statute. A portion of this holding was based upon the fact that a member received the mileage regardless of the member's presence in Columbus. In other words, mileage was provided to the member whether or not the member had in fact traveled to Columbus, therefore, it was not an actual reimbursement for travel, it was a fixed amount.

Two factors have changed since the Committee originally issued Advisory Op. 96-006. First, the policies and practice of the General Assembly have changed regarding the issuance of mileage payments. Mileage is now provided as a strict reimbursement for actual travel made to and from Columbus for official business. No longer is mileage provided regardless of the member's presence in Columbus.

Secondly, R.C. 101.27 has been amended, it now reads as follows:

Each member shall receive a travel allowance per mile each way, at the same mileage rate allowed for the reimbursement of travel expenses of state agents as provided by rule of the director of budget and management pursuant to division (B) of section 126.31 of the Revised Code, for mileage once a week during the session from and to the member's place of residence, by the most direct highway route of public travel to and from the seat of government,

to be paid quarterly on the last day of March, June, September, and December of each year.

Prior to the amendment of R.C. 101.27, the standard for reimbursement was a set amount, twenty and one-half cents per mile. The Committee in deciding an increase in this set amount would be an increase in compensation, held the increase would therefore violate the Constitution. Specifically, in Advisory Op. 96-006, the Committee held an increase in mileage would be in violation of Article II, Section 31 of the state constitution which states:

The members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisite, either in the payment of postage or otherwise, and no change in their compensation shall take effect during their term of office.

Therefore the question has been posed as to whether or not the change from a fixed 20.5 cents to a rate that may fluctuate would be considered an increase in compensation if the rate fluctuated to a higher amount. A review of the new language makes it clear that there has not been a change in the rate, but a change in the standard by which that rate is determined. The amendment created a new fixed standard – the mileage rate allowed provided by rule of the director of budget and management. The amendment to R.C. 101.27 redefines how the reimbursement will be determined, but that standard does not change. The rate is now based on the same mileage rate allowed for the reimbursement of travel expenses of state agents as provided by rule of the director of budget and management pursuant to division (B) of section 126.31 of the Revised Code instead of a fixed dollar amount. However, although the mileage amount may vary within that standard, the standard itself does not vary. Therefore, a member's compensation package is set at the time they take office, and no modification is made to their compensation during that term, their compensation remains fixed.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.

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Conclusion

Accordingly, the Committee finds and the members are so advised: The mileage rate set forth in amended R.C. 101.27 is not an in-term increase in a member's compensation.

Richard H. Finan, Chairman
Joint Legislative Ethics Committee