

**AUDITOR OF STATE BULLETIN 97-008**  
**APRIL 14, 1997**

TO: ALL TOWNSHIP OFFICIALS  
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: COMPENSATION OF TOWNSHIP TRUSTEES AND CLERKS

The Office of Auditor of State has received many questions regarding the proper compensation of township trustees and clerks after passage of House Bill 408. The purpose of this Bulletin is to inform these officials regarding who is eligible for the compensation increase set forth in House Bill 408 and the implications concerning the officers' salaries when the township's budget increases or decreases.

House Bill 408 was signed on February 7, 1996. However, the provisions affecting township trustees and clerks did not take effect until May 8, 1996. The compensation schedules of both township trustees and clerks were increased under the Act. Specifically, the Act increases the base per diem for a trustee and the salary of the township clerk based upon the township budget amounts.

However, Ohio Constitution Article II, Section 20 generally prohibits public officials from receiving increases in compensation in the middle of a term of office. Thus, the only township officials eligible to receive the salary increase are those who have begun a term of office after May 8, 1996, the effective date of the bill. Any township official whose present term had already commenced prior to that date cannot be compensated under the new schedules; otherwise, it would constitute an unlawful in-term increase in compensation. Also, if an individual were to replace a township official after May 8, 1996 because that official either resigned, died or was removed from office, that individual would be eligible to receive the increased rate of compensation set forth in House Bill 408. This would not be an in-term increase in compensation because the new township official's term would have commenced after the effective date of House Bill 408. In State ex rel. Pugh v. Tanner, the Tuscarawas County Court of Appeals held that the salary of a person appointed to fill a vacancy in a public office is controlled by the law in effect at the time the appointment was made and not by the law in effect at the time his/her predecessor was elected for the term to be completed. State ex rel. Pugh v. Tanner, 27 O.C.A. 385 (1917).

There have also been many questions about the affects on the trustees' and clerk's salaries when the township budget increases or decreases. The budget, as used for purposes of determining the authorized compensation of township clerks and trustees, is based upon the official certificate of estimated resources, and any amended official certificate, received from the county budget commission.

If an increase or decrease in the township's budget results in a change in the compensation schedule bracket that states what the official should be paid, then the change takes place from the date of the amended certificate forward. The schedule of compensation for clerks is stated in

Ohio Rev. Code § 507.09 and is stated for trustees in Ohio Rev. Code § 505.24. If a trustee's or clerk's compensation increases or decreases due to changes in the township's budget, that is constitutionally permissible. Increases or decreases in compensation due to application of a mathematical formula or predetermined schedule do not violate Article II, Section 20. It is only when the entire formula or schedule is increased or decreased, as in House Bill 408, that makes Article II, Section 20's prohibition on in-term compensation changes applicable.

Unfortunately, until all of the township's trustees and the clerk have terms beginning after May 8, 1996, there are two schedules of compensation that should be referred to when an increase or decrease in the budget takes place. The first is the old schedule of compensation that was in effect prior to the effective date of House Bill 408. The other is the new schedule of compensation that became effective after the provisions of House Bill 408 went into effect. If the official was not eligible to receive the higher rate of compensation under the new schedule as set forth by House Bill 408, and there was a subsequent increase in the budget which caused the official to move into a higher bracket, then that official is eligible for a salary increase, but one that is calculated under the old schedule. In contrast, if the official is eligible to be paid under the new schedule of compensation and there is an increase in the budget placing the official in a higher bracket, that official is eligible to be paid at a higher rate under the new schedule of compensation.

We hope this bulletin will alleviate some of the confusion that House Bill 408 has caused township officials. If you have any questions, please contact the Legal Division at (800) 282-0370 or (614) 752-8683.