

July 12, 2011

The Honorable Dave Yost
Auditor of State
88 East Broad Street
Columbus, Ohio 43215

SYLLABUS:

2011-025

1. The authority of a board of education to employ and fix the compensation of the school district's superintendent pursuant to R.C. 3319.01 includes the power to adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave.
2. Pursuant to R.C. 124.39(C) and R.C. 124.384(C), a board of education that has established vacation leave for the school district's superintendent under R.C. 3319.01 may adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2011-025

The Honorable Dave Yost
Auditor of State
88 East Broad Street
Columbus, Ohio 43215

Dear Auditor Yost:

You have requested an opinion regarding the authority of a board of education that has established vacation leave for the school district's superintendent under R.C. 3319.01 to provide for payment of the superintendent's accrued, unused vacation leave. In your letter you state that "annual payments of accrued but unused vacation leave to superintendents is a widespread practice among Ohio school districts." While R.C. 3319.01 explicitly authorizes a board of education to provide for payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment, the statute does not similarly authorize a board of education to provide for payment of the superintendent's accrued, unused vacation leave at the end of each school year. Given the language of R.C. 3319.01, you ask whether a board of education that has established vacation leave for the school district's superintendent under R.C. 3319.01 may adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave.

Authority of a Board of Education to Compensate the School District's Superintendent

A board of education, as a creature of statute, *see* R.C. Chapter 3313, has only that authority granted by statute or necessarily incidental to the performance of the board's express powers. 1981 Op. Att'y Gen. No. 81-052 at 2-199; *see Dayton Classroom Teachers Ass'n v. Dayton Bd. of Educ.*, 41 Ohio St. 2d 127, 130-31, 323 N.E.2d 714 (1975); *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929) (syllabus, paragraph 1). For this reason, a board of education may not adopt a policy that provides for payment of a superintendent's accrued, unused vacation leave at times prior to the superintendent's death or separation from employment unless the board has the authority to do so by statute or necessary implication.

Pursuant to R.C. 3319.01, a board of education is authorized to employ and fix the compensation of the school district's superintendent. *See* R.C. 3319.08; R.C. 3319.09(A). *See generally* 1981 Op. Att'y Gen. No. 81-052 at 2-202 ("a legislative grant of power to employ necessarily includes the power to fix compensation"). The compensation of a superintendent may

include vacation leave as a fringe benefit.¹ R.C. 3319.01; *see* 2008 Op. Att’y Gen. No. 2008-017 at 2-186 n.3 (citing *Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984) for the proposition that vacation leave is a form of compensation); 1981 Op. Att’y Gen. No. 81-052 at 2-202 (“fringe benefits are compensation”). R.C. 3319.01 also authorizes a board of education to provide for payment of a superintendent’s accrued, unused vacation leave as a fringe benefit:

Upon the superintendent’s separation from employment a board that has such leave may provide compensation at the superintendent’s current rate of pay for all lawfully accrued and unused vacation leave to the superintendent’s credit at the time of separation, not to exceed the amount accrued within three years before the date of separation. In case of the death of a superintendent, such unused vacation leave as the board would have paid to this superintendent upon separation shall be paid in accordance with [R.C. 2113.04] or to the superintendent’s estate.

R.C. 3319.01 states that a board of education may provide for payment of a superintendent’s accrued, unused vacation leave upon the superintendent’s death or separation from employment. R.C. 3319.01 does not set forth any other times when a board of education may provide for payment of a superintendent’s accrued, unused vacation leave. R.C. 3319.01 thus authorizes a board of education to provide for payment of a superintendent’s accrued, unused vacation leave in two instances—upon the superintendent’s death or separation from employment.

The Authority of a Board of Education to Employ and Fix the Compensation of a Superintendent Includes the Power to Add to the Benefits Provided Under R.C. 3319.01

A board of education may, however, grant a superintendent fringe benefits in excess of those authorized by R.C. 3319.01. *See* 1981 Op. Att’y Gen. No. 81-052 at 2-201 and 2-202; *see also Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); 2008 Op. Att’y Gen. No. 2008-017 at 2-185 and 2-186; 2007 Op. Att’y Gen. No. 2007-012 at 2-103. As explained in 1981 Op. Att’y Gen. No. 81-052 at 2-202, which examined the authority of a board of education to provide fringe benefits to a school district’s employees:

Under the force of the decisions of the Supreme Court in Parsons and Ebert, I readily conclude that *the authority to provide fringe benefits flows directly from the authority to set compensation and is circumscribed only by apposite statutory authority which either ensures a minimum benefit entitlement or otherwise constricts the employer’s authority vis a vis a particular fringe benefit*. The court’s decision in Ebert provides the framework within which a question concerning the authority of a

¹ In the context of public employee compensation, “a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his current employment.” 1982 Op. Att’y Gen. No. 82-006 at 2-16 and 2-17.

public employer to provide a fringe benefit must be analyzed. *The statutory scheme covering the public employer and its employees must be reviewed in order to establish the distinct authority of the public employer to compensate. Once the requisite authority to compensate has been established, any statutory provisions pertinent to the provision of the particular fringe benefit in issue by the public employer to its employees must be identified.* If the particular fringe benefit is not the subject of any statutory provisions applicable to the public employer or its employees, the fringe benefit in question is a permissible exercise of the public employer's authority to compensate its employees. On the other hand, if the particular fringe benefit is the subject of any statutory provision applicable to the public employer or its employees, further consideration is required. If an applicable statute constitutes a minimum statutory entitlement to a particular benefit, the public employer may, pursuant to its power to compensate and in the absence of any statute constricting its action in the particular case, choose to provide such benefit in excess of the minimum statutory entitlement. If an applicable statute limits the general authority of the public employer to compensate its employees with the particular fringe benefit in question, it must, of course, be viewed as a restriction upon the employer's authority to grant the particular benefit. (Footnote omitted and emphasis added.)

We concur with the analysis of 1981 Op. Att'y Gen. No. 81-052. Under that analysis, a board of education may, pursuant to its authority to employ and compensate a superintendent, grant the superintendent fringe benefits in excess of those authorized by R.C. 3319.01, subject to any statutory restrictions on the granting of that benefit. *See* 1981 Op. Att'y Gen. No. 81-052 at 2-201 and 2-202; *see also Ebert v. Stark County Bd. of Mental Retardation.*

Pursuant to R.C. 3319.01, a board of education "may" provide for payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment. The use of the term "may" in describing the authority of a board of education to provide for payment of a superintendent's accrued, unused vacation leave indicates that a board has discretion whether to provide the benefit upon the superintendent's death or separation from employment since there is no other language in R.C. 3319.01 "that evidences a clear and unequivocal [legislative] intent to the contrary." *State v. Golphin*, 81 Ohio St. 3d 543, 546, 692 N.E.2d 608 (1998). *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage"). In other words, R.C. 3319.01 does not require a board of education to provide for payment of a superintendent's accrued, unused vacation leave only upon the superintendent's death or separation from employment.

In addition, nothing in R.C. 3319.01 or elsewhere in the Revised Code (1) specifically limits the instances in which a board of education may provide for payment of a superintendent's accrued,

unused vacation leave,² (2) prohibits a board from providing for payment of a superintendent's accrued, unused vacation leave at times other than upon the superintendent's death or separation from employment, or (3) places a limit on the total amount of compensation a superintendent may receive from a board for accrued, unused vacation leave.³ Absent such language, there is no affirmative, statutory prohibition against a board of education adopting a policy to provide for payment of a superintendent's accrued, unused vacation leave at times other than upon the superintendent's death or separation from employment.

R.C. 3319.01 thus does not set forth language akin to the mandatory or prohibitory language in other statutes that we have found in the past to be constricting upon an appointing authority's power to establish a particular fringe benefit. *See generally* 2009 Op. Att'y Gen. No. 2009-009 at 2-66 and 2-67 (examining prior opinions of the Attorney General that have found the power of an appointing authority to establish a particular fringe benefit limited by constricting statutory language). Instead, the language of R.C. 3319.01 authorizes a board of education to provide a particular fringe benefit to a superintendent if it so chooses. The language of R.C. 3319.01 authorizing a board of education to provide for payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment, therefore, does not operate to constrict the authority of a board to provide for payment of a superintendent's accrued, unused vacation leave at other times.

In fact, as stated below, the General Assembly has pursuant to R.C. 124.39(C) and R.C. 124.384(C) given a board of education statutory authority to provide for payment of a

² As we explain later in this opinion, the General Assembly has not limited the authority of a board of education to provide for payment of a superintendent's accrued, unused vacation leave at times other than upon the superintendent's death or separation from employment. To the contrary, pursuant to R.C. 124.39(C) and R.C. 124.384(C), a board of education has explicit authority to adopt a policy that provides for payment of a superintendent's accrued, unused vacation leave at times other than upon the superintendent's death or separation from employment. *Cf.* 2009 Op. Att'y Gen. No. 2009-009 (syllabus, paragraph 3) (“[a] county appointing authority that employs only non-bargaining unit employees has the power under the second sentence of R.C. 325.19(F) to adopt an alternative schedule, upon notification to the board of county commissioners, that increases the minimum vacation benefits to which its employees are entitled, and that supersedes statutory limitations, such as those in R.C. 325.19(C), on such benefits”).

³ Pursuant to R.C. 3319.01, if a board of education provides for payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment, the board may not provide for the payment of more than three years worth of accrued, unused vacation leave. This three year limitation applies whenever a board of education provides for payment of a superintendent's accrued, unused vacation leave *at the time* of the superintendent's death or separation from employment. The three year limitation does not, however, serve as a maximum on the total number of years a board of education may provide for payment of a superintendent's accrued, unused vacation leave when the board provides for payment of a superintendent's accrued, unused vacation leave *at times other* than upon the superintendent's death or separation from employment.

superintendent's accrued, unused vacation leave at times other than upon the superintendent's death or separation from employment. The granting of such authority to a board of education demonstrates further that the language of R.C. 3319.01 authorizing a board to provide for payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment should not be construed to operate as a restriction upon the authority of a board to provide for payment of a superintendent's accrued, unused vacation leave at other times. *See generally* 2009 Op. Att'y Gen. No. 2009-009 at 2-70 (R.C. 325.19(F) "grants appointing authorities the new power to supersede statutes that, under an *Ebert* analysis, would otherwise constrict their authority to grant non-bargaining unit employees vacation benefits. If a collective bargaining agreement provides bargaining unit employees a vacation benefit, division (F) authorizes the appointing authority to provide its non-bargaining unit employees with the same benefit (upon notification to the board of county commissioners), even though section 325.19 'or any other section of the Revised Code' would constrict the appointing authority from doing so. The 'notwithstanding' language *clearly expands the power of an appointing authority to adopt alternative schedules that vary the provisions of any statute that would otherwise constrict the power of an appointing authority to establish vacation benefits for its non-bargaining unit employees*" (citation omitted and emphasis added)).

Accordingly, the authority of a board of education to employ and fix the compensation of the school district's superintendent pursuant to R.C. 3319.01 includes the power to adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave. *See generally* 1987 Op. Att'y Gen. No. 87-074 at 2-480 n.5 (a "county sheriff may, pursuant to his power to appoint and fix the compensation of his employees under R.C. 325.17 and R.C. 325.27, and absent constricting statutory authority, adopt a policy for the payment of accrued, unused vacation leave benefits to his employees that is different from that set forth in R.C. 325.19(C), provided any such policy grants benefits as great as those established under R.C. 325.19(C)"); 1984 Op. Att'y Gen. No. 84-071 (syllabus, paragraph 2) (qualified, in part, by 1990 Op. Att'y Gen. No. 90-074 (syllabus, paragraph 2)) ("[a] county board of mental retardation and developmental disabilities, pursuant to its authority to employ and fix the compensation of its employees, may adopt a policy which provides for cash payment to employees at the end of each school year for the past year's accrued sick leave benefits, provided that the board's policy provides benefits at least as great as any benefits to which such employees may otherwise be entitled pursuant to statute or pursuant to a policy adopted by the board of county commissioners under the authority of R.C. 124.39(C)").

R.C. 124.39(C) Authorizes a Board of Education to Adopt Policies Similar to the Provisions Contained in R.C. 124.382-.386

A board of education also has statutory authority under R.C. 124.39(C) to adopt a policy that provides for the annual payment of a superintendent's accrued, unused vacation leave. The final sentence of R.C. 124.39(C) states that, "[a] political subdivision may adopt policies similar to the

provisions contained in [R.C. 124.382-.386].”⁴ Opinions of the Attorney General that have considered the final sentence of R.C. 124.39(C) have concluded that only a political subdivision covered by R.C. 124.38 or R.C. 3319.141 may act pursuant to R.C. 124.39(C). 1984 Op. Att’y Gen. No. 84-071 at 2-230; 1981 Op. Att’y Gen. No. 81-062 at 2-254; 1981 Op. Att’y Gen. No. 81-052 at 2-204; 1981 Op. Att’y Gen. No. 81-015 (syllabus, paragraph 2) (qualified, in part on other grounds, by 1990 Op. Att’y Gen. No. 90-074 (syllabus, paragraph 2)). In reaching this conclusion, these opinions reasoned as follows:

Whether the board of county commissioners or the board of elections may adopt a policy for payment of unused sick leave pursuant to R.C. 124.39(C) depends on the meaning of “political subdivision,” as used in that section. I believe that the legislature intended that R.C. 124.39(B) and R.C. 124.39(C) be read *in pari materia*, so that “political subdivision,” as used in R.C. 124.39(C), is modified by the words, “covered by section 124.38 or 3319.141 of the Revised Code,” the language used to describe the types of political subdivisions covered by R.C. 124.39(B).⁵ *If a subdivision is not bound by the minimums established by R.C. 124.39(B), there is no need to authorize such subdivision to grant sick leave benefits in excess of those minimums.* Thus, the only type of political subdivision which is authorized to formulate a policy for payment for unused sick leave pursuant to R.C. 124.39(C) is a “political subdivision covered by section 124.38 or 3319.141 of the Revised Code.” (Footnote omitted and emphasis and footnote added.)

1981 Op. Att’y Gen. No. 81-015 at 2-58.

It is reasonable to conclude that divisions (B) and (C) of R.C. 124.39 are *in pari materia* and that the term “political subdivision,” as used in R.C. 124.39(C), should be construed in light of the language of R.C. 124.39(B) since both divisions relate to the same subject—payment for accrued, unused sick leave by a political subdivision. *See id.* at 2-58 n.4 (“[b]ecause R.C. 124.39(B) and (C) were enacted in the same act, (Am. H.B. 179, 112th Gen. A. (1978) (eff. Sept. 25, 1978)), relate to the same subject matter, and became effective at the same time, the sections are *in pari materia*”). *See generally In re C.W.*, 104 Ohio St. 3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, at ¶7 (2004) (“[s]tatutes concerning the same subject matter must be construed *in pari materia*”). And, in reading these divisions in this manner, it follows that, for purposes of R.C. 124.39(C), the term “political

⁴ R.C. 124.382-.386 establish a variety of fringe benefits for employees who are paid by warrant of the Auditor of State, including sick leave credit, payment for accrued, unused sick leave and vacation leave, disability leave, and personal leave credit.

⁵ R.C. 124.39(B) provides that, except as provided in R.C. 124.39(C), “an employee of a political subdivision covered by [R.C. 124.38 or R.C. 3319.141] may elect, at the time of retirement from active service with the political subdivision, and with ten or more years of service with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of the employee’s accrued but unused sick leave credit.”

subdivision” means a political subdivision covered by R.C. 124.38 or R.C. 3319.141. *See* 1984 Op. Att’y Gen. No. 84-071 at 2-230; 1981 Op. Att’y Gen. No. 81-062 at 2-254; 1981 Op. Att’y Gen. No. 81-052 at 2-204; 1981 Op. Att’y Gen. No. 81-015 (syllabus, paragraph 2).

R.C. 124.38 and R.C. 3319.141 establish a minimum sick leave benefit for employees of school districts. R.C. 3319.141 states that “[e]ach person who is employed by any *board of education in this state* ... shall be entitled to fifteen days sick leave with pay, for each year under contract, which shall be credited at the rate of one and one-fourth days per month.” (Emphasis added.) R.C. 124.38 provides further that “[e]mployees of any *board of education* for whom sick leave is not provided by [R.C. 3319.141]”⁶ are “entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay.” (Emphasis added.) R.C. 124.38 and R.C. 3319.141 thus apply to school districts. This means that a school district is a political subdivision for purposes of R.C. 124.39(C), and, as such, a board of education of a school district may adopt policies similar to the provisions contained in R.C. 124.382-386. *See* 1991 Op. Att’y Gen. No. 91-026 at 2-141; 1981 Op. Att’y Gen. No. 81-052 at 2-204 n.5; *see also* 1978 Op. Att’y Gen. No. 78-057 (syllabus, paragraph 5) (“[t]he board of education is responsible for promulgating a policy for the payment of accumulated, unused sick leave for eligible employees of a school district upon retirement pursuant to R.C. 124.39(C)”).

A Board of Education May Adopt a Policy Authorizing Early Payment of a Superintendent’s Accrued, Unused Vacation Leave

R.C. 124.382-386 establish a variety of fringe benefits for employees who are paid by warrant of the Auditor of State, including sick leave credit, payment for accrued, unused sick leave and vacation leave, disability leave, and personal leave credit. With respect to the authority of the state to provide for payment of an employee’s accrued, unused vacation leave, R.C. 124.384(C) provides as follows: “For employees paid in accordance with [R.C. 124.152] and those employees listed in divisions (B)(2) and (4) of [R.C. 124.14], the director of administrative services, with the approval of the director of budget and management, may establish a plan for *early payment*⁷ of accrued sick leave and vacation leave.”⁸ (Emphasis and footnote added.) Thus, insofar as a board of education has the

⁶ City school districts are subject to the provisions of R.C. Chapter 124, and thus R.C. 3319.141 does not apply to such districts. *See* R.C. 124.01(A), (C); R.C. 124.011; 1981 Op. Att’y Gen. No. 81-071 at 2-287 n.1.

⁷ An employee paid in accordance with R.C. 124.152 or listed in R.C. 124.14(B)(2) or (4) is entitled to be paid for accrued, unused vacation leave upon the employee’s death or separation from employment. R.C. 124.134(E); *see also* R.C. 124.13(E) (an employee who does not accrue vacation leave under R.C. 124.134 is entitled to be paid for accrued, unused vacation leave upon the employee’s death, separation from employment, or transfer from one state agency to another).

⁸ The Director of Administrative Services has adopted and promulgated 2 Ohio Admin. Code 123:1-41-22, which provides, in part:

authority, pursuant to the final sentence of R.C. 124.39(C), to adopt policies similar to those set forth in R.C. 124.384(C), a board may adopt a policy that provides for early payment of a superintendent's accrued, unused vacation leave. *See generally* 2000 Op. Att'y Gen. No. 2000-020 (syllabus, paragraph 2) (“[p]ursuant to the last sentence of R.C. 124.39, granting political subdivisions the authority to adopt policies similar to those contained in R.C. 124.382 to R.C. 124.386, a board of county commissioners may adopt a policy similar to that described in R.C. 124.384 permitting county employees who retire or resign to be paid for only a portion of their unused sick leave credit and retain the remaining leave for credit upon reemployment in the public service”).

As explained above, R.C. 3319.01 authorizes a board of education to provide for payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment. If a board of education provides such a benefit, the board may, in accordance with R.C. 124.39(C) and R.C. 124.384(C), adopt a policy that provides for payment of a superintendent's accrued, unused vacation leave at times earlier than the superintendent's death or separation from employment. *See generally* 2009 Op. Att'y Gen. No. 2009-009 (syllabus, paragraph 3) (“[a] county appointing authority that employs only non-bargaining unit employees has the power under the second sentence of R.C. 325.19(F) to adopt an alternative schedule, upon notification to the board of county commissioners, that increases the minimum vacation benefits to which its employees are entitled, and that supersedes statutory limitations, such as those in R.C. 325.19(C), on such benefits”).

The authority conferred upon a board of education by R.C. 124.39(C) and R.C. 124.384(C) thus clearly and unequivocally grants a board the power to adopt a policy that provides for the annual payment of a superintendent's accrued, unused vacation leave prior to the superintendent's death or separation from employment. Therefore, in response to your specific question, pursuant to R.C. 124.39(C) and R.C. 124.384(C) or its authority to employ and fix the compensation of the school district's superintendent pursuant to R.C. 3319.01, a board of education that has established vacation leave for the school district's superintendent under R.C. 3319.01 may adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave.⁹

(A) General. Any employee who is eligible for a cash conversion of their accumulated leave and who is laid off may have his or her accumulated balances of vacation, personal leave, and sick leave converted to a cash benefit according to the following:

...;

(2) Any accumulated unused balance of vacation may be converted to a cash payment at the time an employee is laid off.

⁹ Pending legislation that is the subject of a referendum petition filed with the Secretary of State amends R.C. 124.39, R.C. 3319.01, and R.C. 3319.141. *See* Am. Sub. S.B. 5, 129th Gen. A. (2011). If the legislation is submitted to, and approved by, the electors of the state, the analysis and conclusions of this opinion may be affected.

Adoption of a Policy for the Early Payment of Accrued, Unused Vacation Leave

While a board of education has the power to adopt a policy for the annual payment of a superintendent's accrued, unused vacation leave, the board must do so in accordance with applicable statutes. *See* 1981 Op. Att'y Gen. No. 81-052 at 2-202 (the statutory scheme covering the employment relationship between a board of education and its employees must be reviewed in order to establish the authority of the board to provide a particular fringe benefit. Once the authority to provide the fringe benefit is established, any statutory provisions pertinent to the provision of the fringe benefit by a board of education to its employees must be reviewed). As summarized above, R.C. 124.39(C) and R.C. 124.384(C) authorize a board of education to adopt a "policy" that establishes a "plan" for early payment of a superintendent's accrued, unused vacation leave.

The terms "policy" and "plan" are not defined for purposes of R.C. 124.39(C) and R.C. 124.384(C). These terms thus are to be accorded their common, ordinary meaning. R.C. 1.42; *see also* 1978 Op. Att'y Gen. No. 78-057 at 2-139 ("[b]ecause 'policy' is not defined in R.C. Chapter 124, it must be '... read in the context and construed according to the rules of grammar and common usage'" (quoting R.C. 1.42)). *Merriam-Webster's Collegiate Dictionary* 960 (11th ed. 2005) defines the term "policy" as a "definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions ... : a high-level overall plan embracing the general goals and acceptable procedures esp. of a governmental body." This same dictionary at 947 states that the term "plan," as a noun, means an "often customary method of doing something : PROCEDURE ... : a detailed formulation of a program of action." Accordingly, the use of the terms "policy" and "plan" in R.C. 124.39(C) and R.C. 124.384(C) indicates that a board of education must establish formal procedures before granting early payment of a superintendent's accrued, unused vacation leave.

This means that an employment contract between a board of education and superintendent may not provide for the annual payment of the superintendent's accrued, unused vacation leave unless the board has complied with R.C. 124.39(C) and R.C. 124.384(C) and adopted formal guidelines authorizing the annual payment of the superintendent's accrued, unused vacation leave. Absent the adoption of such guidelines, a board of education may not provide for the annual payment of a superintendent's accrued, unused vacation leave pursuant to R.C. 124.39(C) and R.C. 124.384(C) or its authority to employ and fix the compensation of the school district's superintendent pursuant to R.C. 3319.01.

Conclusions

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

1. The authority of a board of education to employ and fix the compensation of the school district's superintendent pursuant to R.C. 3319.01 includes the power to adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave.

2. Pursuant to R.C. 124.39(C) and R.C. 124.384(C), a board of education that has established vacation leave for the school district's superintendent under R.C. 3319.01 may adopt a policy that provides for the annual payment of the superintendent's accrued, unused vacation leave.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General