March 20, 2002

The Honorable W. Duncan Whitney
Delaware County Prosecuting Attorney
15 West Winter Street
Delaware, Ohio 43015

SYLLABUS: 2002-011

Pursuant to R.C. 325.19(A)(1), a full-time county employee has earned and is entitled to be credited with forty hours of vacation leave upon the completion of eight, fifteen, or twenty-five years of service, in addition to the amount of vacation leave already accrued on a biweekly basis during each of those years. (1994 Op. Att'y Gen. No. 94-008 and 1982 Op. Att'y Gen. No. 82-093, approved and followed.)

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OPINION NO. 2002-011

The Honorable W. Duncan Whitney
Delaware County Prosecuting Attorney
15 West Winter Street
Delaware, Ohio 43015

Dear Prosecutor Whitney:

We have received your request for an opinion concerning the interpretation of R.C. 325.19, which establishes the amount of vacation leave to which a county employee is entitled by statute.[1] Your request states that county appointing authorities are crediting their employees with forty additional hours of accrued vacation leave immediately upon completion of eight, fifteen, or twenty-five years of full-time county service. You characterize this as "a forty-hour vacation leave bonus" and ask whether it is consistent with the language of the statute.

Let us begin an examination of your question with a review of the relevant provisions of R.C. 325.19.[2] That statute provides that, after one year of service, a full-time county employee

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[1] There are circumstances in which the amount of vacation leave granted to county employees may vary from the minimum vacation leave entitlement provided by R.C. 325.19. Appointing authorities may grant more than the minimum vacation leave entitlement, or vacation leave may be addressed in collective bargaining agreements. *See, e.g., Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984); R.C. Chapter 4117; 1994 Op. Att'y Gen. No. 94-008; 1989 Op. Att'y Gen. No. 89-012, at 2-47. This opinion, however, considers only the statutory grant of vacation leave provided pursuant to R.C. 325.19(A)(1).

[2] The relevant portion of R.C. 325.19 states:

> The granting of vacation leave under division (A)(1) of this section is subject to divisions (A)(2) and (3) of this section. Each full-time employee in the several offices and departments of the county service, including full-time hourly rate employees, *after service of one year* with the county or any political subdivision of the state, *shall have earned and will be due upon the attainment of the first year of employment*, and annually thereafter, eighty hours of vacation

"shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay." R.C. 325.19(A)(1). A full-time county employee with eight or more years of service "shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay." *Id*. A full-time county employee with fifteen or more years of service "shall have earned and is entitled to one hundred sixty hours of vacation leave with full pay." *Id*. A full-time county employee with twenty-five years of service "shall have earned and is entitled to two hundred hours of vacation leave with full pay." *Id.*

The statute proceeds to set forth rates of accrual, under which a full-time employee accrues, in equal increments granted in each of twenty-six biweekly pay periods, the amount of vacation leave needed to total, respectively, eighty, one hundred twenty, one hundred sixty, or two hundred hours per year. The statute states that "[s]uch vacation leave shall accrue to the employee" at the appropriate rate "for those entitled," respectively, to eighty, one hundred twenty, one hundred sixty, or two hundred hours per year. R.C. 325.19(A)(1).[3]

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> leave with full pay. One year of service shall be computed on the basis of twenty-six biweekly pay periods. A full-time county employee with eight or more years of service with the county or any political subdivision of the state *shall have earned and is entitled to* one hundred twenty hours of vacation leave with full pay. A full-time county employee with fifteen or more years of service with the county or any political subdivision of the state *shall have earned and is entitled to* one hundred sixty hours of vacation leave with full pay. A full-time county employee with twenty-five years of service with the county or any political subdivision of the state *shall have earned and is entitled to* two hundred hours of vacation leave with full pay. Such vacation leave *shall accrue to the employee at the rate of* three and one-tenth hours each biweekly period *for those entitled to eighty hours per year*; four and six-tenths hours each biweekly period *for those entitled to one hundred twenty hours per year*; six and two-tenths hours each biweekly period *for those entitled to one hundred sixty hours per year*; and seven and seven-tenths hours each biweekly period *for those entitled to two hundred hours per year*.

R.C. 325.19(A)(1) (emphasis added).

[3] There are various other provisions in R.C. 325.19 that relate to vacation leave for employees who work different schedules, and there are other statutes that affect the entitlement to vacation leave benefits. *See, e.g.,* R.C. 9.44; R.C. 325.19(A)(2) and (3). This opinion addresses directly only full-time county employees who receive vacation leave pursuant to R.C. 325.19(A)(1), although the principles discussed in this opinion may be applicable to other situations.

The county vacation leave statute thus speaks both of earning vacation leave and of accruing vacation leave. The statute does not expressly define the terms "earn" and "accrue." From the context of the statute, however, it is clear that vacation leave that has been earned is vacation leave to which an employee is entitled. R.C. 325.19(A)(1). *See generally Black's Law Dictionary* 525 (7th ed. 1999) ("earn" means "[t]o do something that entitles one to a reward or result, whether it is received or not"). The statute prescribes amounts of vacation leave that an employee earns on an annual basis. R.C. 325.19(A)(1).

The term "accrue" applies to the manner in which vacation leave that has been earned is credited to an employee and made available for the employee to use. R.C. 325.19(A)(1); 1982 Op. Att'y Gen. No. 82-093 (syllabus, paragraph 2) ("[a] full-time county employee is entitled to use the vacation leave accrued under R.C. 325.19(A) as soon as it accrues"). Thus, following the first year of employment an employee accrues vacation leave each biweekly pay period at the rate prescribed by statute. *See generally Black's Law Dictionary* 21 (7th ed. 1999) ("accrue" means "[t]o accumulate periodically"). An employee does not accrue vacation leave until that vacation leave has been earned. *See, e.g.,* 1994 Op. Att'y Gen. No. 94-008, at 2-30 n.1; 1985 Op. Att'y Gen. No. 85-035; 1982 Op. Att'y Gen. No. 82-064.

Let us now consider the practical operation of this statute. Following the first year of employment, the employee has earned and is credited with eighty hours of vacation leave. You have not questioned this portion of the statute. It is generally understood that a county employee must work for an entire year before being granted any vacation leave, and will then be granted eighty hours of vacation leave that may be used beginning in the second year of employment. This procedure is consistent with the language providing that eighty hours of vacation leave is "earned and will be due upon the attainment of the first year of employment." R.C. 325.19(A)(1); s*ee* 1994 Op. Att'y Gen. No. 94-008; 1989 Op. Att'y Gen. No. 89-012; 1985 Op. Att'y Gen. No. 85-035.

During each of the next six years, the employee accrues vacation leave biweekly at a rate at which the amount accrued each year totals eighty hours. This is the amount of vacation leave to which the employee is entitled for years two through seven. At the end of each of those years, the employee has accrued a year's worth of vacation.

During the eighth year, the employee also accrues eighty hours of vacation leave. However, the statute makes a change in the amount of vacation leave earned, stating that a full-time county employee with eight years of service "shall have earned and is entitled to" one hundred twenty hours of vacation leave. Thus, upon completion of the eighth year, the employee has earned and is entitled to one hundred twenty hours of vacation leave, but has accrued only eighty hours of vacation leave during that year. Accordingly, upon completion of the eighth year, the forty hours of vacation leave to which the employee has become entitled, but which did not accrue during the eighth year, must be placed to the employee's credit.

It might be argued that the higher accrual rate that would result in a yearly accrual of one hundred twenty hours of vacation leave should be in effect throughout the entire eighth year, so

that the employee's biweekly accruals during that period total one hundred twenty hours at the end of the eighth year. However, under the terms of the statute, the higher accrual rate does not take effect at the beginning of the eighth year of service. Instead, that higher accrual rate is in effect only "for those entitled to one hundred twenty hours per year," and that entitlement does not take effect until the eighth year has been completed. *See* 1982 Op. Att'y Gen. No. 82-093, at 2-258 ("[s]ince an employee is not entitled to one hundred twenty hours of vacation until he has completed at least eight years of service, his vacation leave does not properly begin to accrue at the increased rate until he has completed his eighth year"). Once the eighth year has been completed, the additional forty hours of vacation leave have been earned and the employee is entitled to them. Hence, an additional forty hours of vacation leave must be granted as a unit following the eighth year of service.

It is not sufficient to argue that the additional forty hours of vacation leave earned at the end of the eighth year will be credited to the employee as part of the vacation leave granted during the following year, for the vacation leave granted during the ninth year of service is vacation leave that the employee earns during that year. The vacation leave earned and accrued during the ninth year totals one hundred twenty hours, and that is the amount to which the employee is entitled for that year. Accordingly, to credit the employee with all the vacation leave that the employee has earned and to which the employee is entitled following the eighth year of service (that is, one hundred twenty hours), it is necessary to grant the employee forty hours of vacation leave at the end of the eighth year of service, in addition to the vacation leave which the employee has accrued on a biweekly basis during the eighth year of service (that is, eighty hours).

The same situation occurs again upon the completion of fifteen and twenty-five years of service. In each such case, the General Assembly has granted an increase in the amount of vacation leave earned at the end of the year, without increasing the rate at which vacation leave is accrued during that year. Under existing statutes, the General Assembly has thus created an arrangement under which the amounts of vacation leave earned in certain years (the first, eighth, fifteenth, and twenty-fifth) exceed the amounts of vacation leave accrued during each of those years. Therefore, grants of additional amounts of vacation leave must be made at the end of each of those years in order to provide the employees with vacation leave that they have earned and to which they are entitled for those years. Accordingly, the grants of vacation leave following those years are an award of vacation leave already earned by the employees, rather than an unearned bonus. *See generally State ex rel. Swartzmiller v. Masheter*, 120 Ohio App. 197, 198, 201 N.E.2d 712, 713 (Franklin County 1964) (vacation leave granted by statute to public employees "is 'earned' and is 'due.' It constitutes compensation for past services already performed").

The issue you have raised arises from the fact that an employee earns vacation leave and becomes entitled to it on the basis of years of service completed, whereas vacation leave is credited to the employee through accrual on an incremental basis throughout the year. On this point, it is helpful to review the history of the county leave vacation statutes. At one time, vacation leave was credited to full-time county employees as a specified number of weeks per

year, accrued "upon each successive annual recurrence" of the anniversary date of employment. *See, e.g.*, 1973 Ohio Laws, Part I, 782 (Am. S.B. 177, eff. Dec. 17, 1973) (amending R.C. 325.19). Thus, once each year following the first year of service, a full-time county employee was granted two or more weeks of vacation leave for use during the following year.

In 1974, the county vacation leave statute was amended to provide for the accrual of vacation leave on a biweekly basis, as described above. *See* 1974 Ohio Laws, Part II, 334 (Am. S.B. 408, eff. July 22, 1974). Entitlement to vacation leave continued to be based on years of service, with the initial grant made following the first year of employment and increases in amounts of vacation leave provided upon completion of the eighth, fifteenth, and twenty-fifth years of service. However, no statutory provision directly addressed the fact that amounts of vacation leave earned and due upon completion of years eight, fifteen, and twenty-five exceeded the amounts accrued during each of those years. In order to carry out the provisions of the statute and provide county employees with the vacation leave benefits they earned, it became necessary to provide a direct grant of additional vacation leave upon completion of years eight, fifteen, and twenty-five.

This issue was addressed by a prior Attorney General in 1982 Op. Att'y Gen. No. 82-093. That opinion concludes that a county employee begins to accrue vacation leave at the appropriate higher rate "upon completion of the eighth, fifteenth, and twenty-fifth years of service." 1982 Op. Att'y Gen. No. 82-093 (syllabus, paragraph 1). The opinion also concludes that a county employee "is entitled to use the vacation leave … as soon as it accrues." *Id*. (syllabus, paragraph 2). Addressing the increased entitlement upon completion of eight years of service, 1982 Op. Att'y Gen. No. 82-093 states:

> [N]otwithstanding the fact that an employee is not entitled to accrue vacation leave at the increased rate of four and six-tenths hours per biweekly period until he has completed eight years of service, since an employee is entitled to one hundred twenty hours of vacation leave upon completion of eight years of service, at such time an employee is entitled to have forty hours of vacation leave placed to his credit. Similarly, forty hours of vacation leave should be placed to an employee's credit upon completion of fifteen and twenty-five years of service, notwithstanding the fact that such additional hours do not actually accrue to the employee during his fifteenth or twenty-fifth year of service.

*Id.* at 2-259.

Thus, 1982 Op. Att'y Gen. No. 82-093 reaches the same conclusion reached above with respect to the crediting of vacation benefits to county employees. This analysis was adopted also in 1994 Op. Att'y Gen. No. 94-008. For the reasons discussed above, we approve and follow both of these earlier opinions on the question here at issue.

Therefore, it is my opinion, and you are advised, that, pursuant to R.C. 325.19(A)(1), a full-time county employee has earned and is entitled to be credited with forty hours of vacation

leave upon the completion of eight, fifteen, or twenty-five years of service, in addition to the amount of vacation leave already accrued on a biweekly basis during each of those years. (1994 Op. Att'y Gen. No. 94-008 and 1982 Op. Att'y Gen. No. 82-093, approved and followed.)

Respectfully,

BETTY D. MONTGOMERY
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