

**OPINION NO. 1405**

**Syllabus:**

Pursuant to a uniform schedule fixed under Section 325.17, Revised Code, employees of the county may be given compensatory time off or may be paid additional compensation for time worked in excess of an established work week or work day.

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**To: Wayne Ward, Director of State Personnel, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, September 25, 1964**

You have requested my opinion on the following question:

"Are employees of county governments in Ohio entitled to compensatory time, or to compensation on any uniform basis, for time which they are required to work in excess of normal working hours in a given calendar week?"

Section 325.17, Revised Code, reads in pertinent part as follows:

"The officers mentioned in Section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. \* \* \*"

This statute, for our purposes, embodies essentially the same provisions as did former Section 2981, General Code, under which many opinions have been rendered, both by the courts and the attorneys general. With regard to the authority of those officers mentioned in Section 325.27, Revised Code, to fix the compensation of their employees, the prevailing view is set out in the syllabus of Commissioners v. Rafferty, 19 N.P. (NS), 97 which reads as follows:

"County commissioners are without power

to fix the compensation of deputies and assistant clerks of the county auditor, treasurer, probate judge, and recorder. The authority to fix such compensation is vested in these several officers, with the limitation that the aggregate compensation to be paid in each office shall not exceed the amount allowed by the county commissioners."

Also in the body of the court's opinion the following statement is made on page 101:

"It is the opinion of this court that the plain and explicit words of this statute give authority to the various county officers to fix the compensation of their deputies."

This authorization to fix compensation is subject only to the limitation that the compensation of all of the deputies, assistants and other employees in each office, shall not exceed, in the aggregate, the amount fixed by the board of county commissioners for such office. Under this broad authority the deputies, assistants and other employees may be paid on a per diem or an hourly basis (Section 325.19, Revised Code), or they may be paid a salary. I can conceive of no reason why county employees may not be paid an overtime rate or be given compensatory time off for time worked in excess of an established work week or work day so long as such overtime rate or compensatory time off is a part of a uniform plan. Indeed the General Assembly appears to have contemplated payment for overtime work by county employees with the passage of Section 325.19, Revised Code, the last paragraph of which provides:

"In the case of the death of a county employee, the unused vacation leave and unpaid overtime to the credit of any such employee, shall be paid in accordance with Section 2113.04 of the Revised Code, or to his estate." (Emphasis added.)

I am not unaware of that line of Opinions which holds that allowances to employees may not be in excess of that fixed for their employment. In this regard the syllabus of Opinion No. 549, Opinions of the Attorney General for 1919, provides in material part:

"The compensation of deputies, clerks and other employees of the several county officers is to be fixed by the said officers respectively and a certificate thereof filed with the county auditor as provided in section 2981 G.C., and allowances to such employes in excess of the amount so fixed and certified, purporting to be made in consideration of extra work or for extra hours are unauthorized.

"\* \* \* \* \*"

The specific questions before the Attorney General were whether

an employee paid a monthly salary could be paid additional compensation for working overtime or extra hours, and whether an employee receiving compensation fixed at a certain rate per day could draw compensation for a number of days worked in any one month in excess of the actual number of working days in such month (by working extra hours during days of the month).

In Opinion No. 1687, Opinions of the Attorney General for 1933, it was concluded, as disclosed by the pertinent part of the syllabus, that:

"\* \* \* \* \* \* \* \* \*

"A stenographer in the prosecuting attorney's office may not receive additional compensation, by virtue of the fact that she is called upon to render additional services after working hours, even though such services might be necessary for the general welfare of the county."

These opinions while addressed to questions arising in the same general area are not determinative of the question at hand. The question of compensatory time off was not of course before my predecessors. The question of overtime pay was, but significantly, in each instance the employee to be compensated for extra hours was a salaried employee and no standard work week or work day had been fixed by the employers. The rationale of these opinions does not preclude payment of overtime to hourly rated employees or payment of compensation or providing compensatory time off to salaried employees who work in excess of an established work week or work day. For in the latter instance the compensation is not extra but is in accordance with the employment contract or schedule.

Accordingly, and in specific answer to your question, it is my opinion and you are advised that pursuant to a uniform schedule fixed under Section 325.17, Revised Code, employees of the county may be given compensatory time off or may be paid additional compensation for time worked in excess of an established work week or work day.