

Note from the Attorney General's Office:

1980 Op. Att'y Gen. No. 80-007 was overruled in part by
1990 Op. Att'y Gen. No. 90-111.

OPINION NO. 80-007**Syllabus:**

The county officers enumerated in R.C. 325.27 may negotiate collective bargaining agreements covering their employees so long as:

- a) the negotiations are not conducted in a manner which constitutes a delegation of their official responsibility;
- b) the aggregate compensation provided does not exceed the ceiling fixed by the county commissioners under R.C. 325.17;
- c) the contract is jointly negotiated with, or ratified by, the county commssioners.

To: Joseph R. Grunda, Lorain County Pros. Atty., Elyria, Ohio
By: William J. Brown, Attorney General, February 14, 1980

I have before me your request for an opinion on the question of whether the board of county commissioners, or the county auditor, recorder, treasurer, engineer, or clerk of courts may collectively bargain with a union representing county employees.

In 1979 Op. Att'y Gen. No. 79-054 I traced the three-decade evolution in the attitude of the Ohio Supreme Court toward collective bargaining in the public sector. In light of the court's decisions in Dayton Classroom Teachers Ass'n v. Board of Education, 41 Ohio St. 2d 127, 323 N.E. 2d 714 (1975), and Civil Service Personnel Ass'n v. City of Akron, 48 Ohio St. 2d 25, 356 N.E. 2d 300 (1976), there can be no doubt that public employers invested with discretion concerning the compensation and working conditions of their employees may voluntarily bargain with labor unions representing their employees. Expressly recognizing the lack of

any Ohio statute authorizing public sector bargaining, the Ohio Supreme Court held in the Dayton case that a city school board was "vested with discretionary authority to negotiate and to enter into a collective bargaining agreement with its employees." 41 Ohio St. 2d at 132, 323 N.E. 2d at 717. The court reaffirmed its holding in the Akron case, saying: "This court has recently recognized the right of public employees, under appropriate circumstances, to bargain collectively." 48 Ohio St. 2d at 28, 356 N.E. 2d at 302. Hence, so long as negotiations are not conducted in a manner which amounts to a delegation of official responsibility, appropriate public employers may voluntarily bargain and contract with labor organizations. See Loveland Education Ass'n v. Board of Education, 58 Ohio St. 2d 31, 387 N.E. 2d 1374 (1979).

While the foregoing cases involved municipal and school district employees, there is utterly no basis for denying similar treatment to county employees. Hence, the real issue presented by your request concerns the identification of which county officials have the requisite authority to bargain and contract. Specifically, you have inquired about the board of county commissioners, the county recorder, auditor, treasurer, and engineer, and the clerk of the common pleas court.

It is apparent from recent decisions of Ohio courts that, in order to negotiate and execute binding collective bargaining agreements, an Ohio public employer must be invested with at least the following powers: (1) the authority to contract; and (2) significant decision-making authority relative to employee compensation and working conditions (i.e., work schedule, discipline, etc.). See Dayton Classroom Teachers Ass'n v. Board of Education, supra, at 131, 32 N.E. 2d at 717; A.F.S.C.M.E. v. Polta, 59 Ohio App. 2d 283, 285, 394 N.E. 2d 310, 311 (Erie County 1977). In short, the public employer must have both the authority to contract and decision-making authority relative to the very substantive issues (e.g., wages, hours, discipline, work schedule, etc.) which may be expected to be addressed and resolved via the collective bargaining process.

Applying this test to the county officials denominated in your request, it is immediately apparent that the individual elected officers have ample authority over their employees' compensation and conditions of employment. R.C. 325.17 provides, in pertinent part:

The officers mentioned in section 325.27 of the Revised Code [auditor, treasurer, probate judge, sheriff, clerk of court, engineer, recorder] 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. . . . Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. (Emphasis added.)

Falling within the penumbra of the foregoing specific statutory grants are a number of lesser-included powers. It has been held, for instance, that R.C. 325.17 gives the officers named therein broad authority to fix wages, number of hours, days, and conditions of employment. 1965 Op. Att'y Gen. No. 65-222. Such officers are vested with "absolute discretion to determine what deputies shall be employed, the length of their employment, and the duties of [their] office to be performed by [the deputies]. . . ." State ex rel. Geyer v. Griffin, 80 Ohio App. 447, 458, 76 N.E. 2d 294, 300 (Allen County 1946). The power to fix compensation includes the power to provide fringe benefits for employees, 1978 Op. Att'y Gen. No. 78-029, and elected county officials can prescribe a standard workweek and pay for overtime work. 1975 Op. Att'y Gen. No. 75-078; 1971 Op. Att'y Gen. No. 71-042; 1964 Op. Att'y Gen. No. 64-1405, p. 2-359. Moreover, officers with the power to fix the compensation of their employees may approve the accumulation of unused sick leave, 1968 Op. Att'y Gen. No. 68-082, and may grant holidays or other days off with pay in addition to those authorized for county employees by R.C. 325.19. Op. No. 71-042.

While the enumerated individual elected officers have ample authority over conditions of employment, they lack express statutory authority to execute binding contracts. See A.F.S.C.M.E. v. Polta, *supra*, at 284-85, 394 N.E. 2d at 311 ("It is the province of the board of county commissioners to make contracts for the county, and no other officer can bind the county by contract, unless by reason of some express provision of law.") (citing 14 Ohio Jur. 2d 369 Counties §221). On the other hand, while the county commissioners have clear contractual authority, their only authority over employee compensation and conditions of employment is to fix an aggregate compensation ceiling which may not be exceeded by the individual officers who determine the compensation for individual job classifications or employees. See R.C. 325.17 ("Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office.").

Past opinions of the Attorney General have consistently opined that R.C. 325.17 (and its analogous predecessors) gives only the enumerated individual officeholders the power to appoint and fix the compensation of their employees, the county commissioners having no power to name the employees or limit or abridge this right. The commissioners have the power only to place a ceiling upon the aggregate amount of compensation which may be expended for the employees of each office. *E.g.*, 1975 Op. Att'y Gen. No. 75-078; 1941 Op. Att'y Gen. No. 3600, p. 190; 1926 Op. Att'y Gen. No. 3429, p. 253. See also County Commissioners v. Rafferty, 19 Ohio N.P. (n.s.) 97 (C.P. Henry County 1916) (commissioners are without power to fix compensation of employees of county officers; authority is vested solely in these several officers). Although the board of county commissioners may serve as the taxing authority for a county office or board, this does not mean that it exercises any supervisory power over employees, programs, or facilities. See 1979 Op. Att'y Gen. No. 79-064; 1978 Op. Att'y Gen. No. 78-027. Hence, while the commissioners have the power to contract, they lack sufficient authority over the compensation and conditions of employment of persons employed by the offices enumerated in R.C. 325.27. Relative to employees of county facilities or departments, which are under the supervision and control of the commissioners (*i.e.*, not under an R.C. 325.27 officer), the commissioners have ample authority to negotiate collective bargaining agreements. See R.C. 305.16 regarding employees necessary for the care of county property and R.C. 329.02 regarding welfare department employees.

While neither the county commissioners nor the individual county officers have sufficient independent power to negotiate and execute collective bargaining agreements relative to employees of the offices enumerated under R.C. 325.27, we must ask whether they could exercise such power in tandem. In short, may the commissioners and the county auditor, for instance, jointly negotiate and execute a collective bargaining agreement covering auditor employees? Alternatively, could the auditor (or some other R.C. 325.27 officer) negotiate a contract which could be ratified by the commissioners?

This is not the first instance wherein my office has been confronted with the spectre of a statutory bifurcation of the powers of county officers. In 1977 Op. Att'y Gen. No. 77-093 the question was whether the county sheriff (a R.C. 325.27 officer) could unilaterally contract for the feeding of prisoners. While answering that question in the negative, the opinion pointed out that the commissioners and sheriff could act in tandem to so contract, to wit:

[I]t is apparent that the duties in [the area of feeding county prisoners] are bifurcated, with purchasing responsibilities lodged with the commissioners and preparation duties with the sheriff. . . . Therefore, a contract by a sheriff with a private commercial concern to provide and prepare food for prisoners would be a usurpation of the statutory authority of the board of county commissioners and thus unlawful.

However, this does not preclude the commissioners and the sheriff from acting in concert to enter into such a contract. Since,

together, they have the authority to provide and feed prisoners, they would together have the requisite power to provide such services through contracting with a private concern.

Therefore, it is my opinion, and you are advised, that the county officers enumerated in R.C. 325.27 may negotiate collective bargaining agreements covering their employees so long as:

- a) the negotiations are not conducted in a manner which constitutes a delegation of their official responsibility;
- b) the aggregate compensation provided does not exceed the ceiling fixed by the county commissioners under R.C. 325.17;
- c) the contract is jointly negotiated with, or ratified by, the county commissioners.