

OPINION NO. 2002-034**Syllabus:**

Absent a collective bargaining agreement providing otherwise, a board of trustees of a non-civil service township may grant the employees it hires pursuant to R.C. 511.10 credit, as a form of compensation, for unused sick leave accumulated in

prior public employment. (1974 Op. Att'y Gen. No. 74-107, syllabus, paragraph two, overruled.)

To: Charles E. Coulson, Lake County Prosecuting Attorney, Painesville, Ohio
By: Betty D. Montgomery, Attorney General, December 11, 2002

You have requested an opinion concerning the authority of the board of trustees of a non-civil service township to adopt an employment policy concerning credit for unused sick leave accumulated in prior public employment. You specifically ask:

Whether the board of trustees of ... a township [that is not a civil] service township, as defined in R.C. 124.01(G), may adopt a policy pursuant to R.C. 511.10 whereby as part of their employee compensation, it credits a township employee who has transferred from another form of public service with a portion of his or her unused accumulated sick leave.

In answering your question, we must begin by noting that a board of township trustees is a creature of statute that may exercise only those powers it has been granted by statute. *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875) (“[i]t is settled that neither the township nor its trustees are invested with the general powers of a corporation; and hence the trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable them to perform the duties imposed upon them”).

Your question concerns the authority of the board of township trustees to employ and compensate employees hired pursuant to R.C. 511.10. In accordance with R.C. 511.10, “[t]he board of township trustees may appoint such superintendents, architects, clerks, laborers, and other employees as are necessary and fix their compensation.” As mentioned in your letter, the court in *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), examined the authority of a county appointing authority to grant its employees sick leave benefits in an amount that varied from the sick leave benefit established by R.C. 124.38. The *Ebert* court found that R.C. 124.38 entitled county employees to a minimum sick leave benefit. As further noted by the *Ebert* court, however, the authority to grant sick leave benefits in excess of that statutory minimum is included within a county appointing authority’s power to fix compensation. As explained in 1981 Op. Att’y Gen. No. 81-052 at 2-202, “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.”

Let us now turn to your specific question concerning the authority of a board of township trustees of a non-civil service township to grant employees it hires under R.C. 511.10 credit for unused sick leave accumulated in prior public employment. R.C. 511.10 authorizes a board of township trustees to employ and fix the compensation of the employees mentioned therein. In accordance with the analysis in *Ebert v. Stark County Bd. of Mental Retardation*, a board of township trustees possesses, as part of its authority to fix compensation, the power to grant its employees sick leave benefits, subject to any statutory restrictions. 1981 Op. Att’y Gen. No. 81-061.

R.C. 124.38¹ establishes minimum sick leave benefits for, among others, “[e]mployees in the various offices of the county, municipal, and *civil service township* service, other than superintendents and management employees, as defined in [R.C. 5126.20], of county boards of mental retardation and developmental disabilities.” (Emphasis added.) Because the township about which you ask is a non-civil service township,² however, R.C. 124.38 does not constrict the power of the township’s board of trustees to establish a sick leave benefit for its employees as part of their compensation. We are unaware of any other statute that would constrict the authority of a board of township trustees to grant the employees it hires pursuant to R.C. 511.10 compensation in the form of credit for unused sick leave accumulated in prior public employment.³

Your opinion request mentions 1974 Op. Att’y Gen. No. 74-104, which concluded in syllabus, paragraph two, that “[a] board of township trustees may not grant its employees who are not under the jurisdiction of a township civil service commission, credit for unused sick leave accumulated in the public service.” As noted in your request, the 1974 opinion was issued prior to the Ohio Supreme Court’s decision in *Ebert v. Stark County Bd. of Mental Retardation*, which found that the power to fix compensation includes the power, subject to any constricting authority, to grant fringe benefits, including sick leave. Because R.C. 511.10 authorizes a board of township trustees to hire certain employees and fix their compensation, we must overrule paragraph two of the syllabus of 1974 Op. Att’y Gen. No. 74-107 to the extent that it applies to township employees hired and compensated pursuant to R.C. 511.10.

Based upon the foregoing, it is my opinion, and you are hereby advised that, absent a collective bargaining agreement providing otherwise, a board of trustees of a non-civil service township may grant the employees it hires pursuant to R.C. 511.10 credit, as a form of compensation, for unused sick leave accumulated in prior public employment. (1974 Op. Att’y Gen. No. 74-107, syllabus, paragraph two, overruled.)

¹R.C. 124.38 grants a certain number of hours of sick leave per pay period, establishes the uses of such sick leave benefits, provides for credit for previously accumulated sick leave of a separated employee, and addresses various other matters related to sick leave.

²R.C. 124.01(G) defines a “[c]ivil service township” as meaning “any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under [R.C. 124.40(B)].”

³We are also assuming that there is no collective bargaining in place that would limit the authority of a board of township trustees to grant the employees it hires pursuant to R.C. 511.10 credit for unused sick leave accumulated in prior public employment. See generally R.C. Chapter 4117 (collective bargaining for various public employees, including employees of a township “with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census,” R.C. 4117.01(B)).