

OPINION NO. 79-026**Syllabus:**

A board of county commissioners may establish different full-time schedules for different employees, provided that each full-time designation is reasonable in relation to the duties of the employees subject thereto and that employees performing substantially the same job duties are treated alike.

To: Michael DeWine, Greene County Pros. Atty., Xenia, Ohio
By: William J. Brown, Attorney General, May 24, 1979

I have before me your request for my opinion which raises the following question:

May a board of county commissioners provide for a range of hours that may be worked in defining who is a full-time employee for determining the eligibility for vacation pay?

It is my understanding that the Greene County Commissioners have defined a full-time employee as being anyone who works 41 to 80 hours biweekly. Your question is whether the Commissioners are statutorily authorized to provide such a range of hours for their full-time employees.

Boards of county commissioners are creatures of statute which may exercise only those powers expressly granted by statute and those necessarily implied therefrom. See, e.g., State ex rel. Clarke v. Cook, 103 Ohio St. 465 (1921); State ex rel. Locher v. Menning, 95 Ohio St. 97 (1916); 1975 Op. Att'y Gen. No. 75-070. Moreover, it is axiomatic that the powers granted to such board are to be strictly construed. Commissioners v. Andrews, 18 Ohio St. 49 (1868); State ex rel. Treadwell v. Commissioners, 11 Ohio St. 183 (1860). Consequently, the authority of the board to establish a range of hours for the determination of the full-time status of its employees must either be expressly authorized by statute or necessary implied from an express statutory provision.

A board of county commissioners is authorized to hire certain employees by R.C. 305.13 (authorizing a board of county commissioners to appoint a clerk and assistant clerks), R.C. 305.15 (authorizing the employment of an engineer, assistant

engineers, rodmen and inspectors), and R.C. 305.16 (permitting the hiring of a superintendent, watchmen, janitors, and other employees necessary for the care and custody of county property). R.C. 305.17 authorizes the commissioners to fix the compensation of such employees.

R.C. 325.19 mandates that each "full-time" employee in the county service be given vacation after one year and sets forth a formula for its computation. In 1962 Op. Att'y Gen. No. 3464, p. 971, one of my predecessors noted, in paragraph two of the syllabus, that:

There is no statutory designation of what constitutes full-time employment for county employees within the purview of Section 325.19, Revised Code, and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employees.

In 1975 Op. Att'y Gen. No. 75-078, I had occasion to discuss the question whether county officers mentioned in R.C. 325.27 were permitted to establish different working hours for different people in their employ. I found that there was no statutory requirement of uniformity of working hours within a county office; however, I noted that Ohio Const. art. II, §26 (mandating that all laws have a uniform application), has been held to require that any variation in the application of a statute must be based upon a reasonable classification. Village of Beachwood v. Bd. of Elections, 167 Ohio St. 369, 372 (1958); City of Cleveland v. Davis, 95 Ohio St. 52 (1916); State ex rel. Yaple v. Creamer, 85 Ohio St. 349, 404-405 (1912). Similarly, the reasonableness of a classification with respect to a legitimate purpose has been applied as the test in cases arising under Ohio Const. art. I, §2 (guaranteeing equal protection). City of Painesville v. Bd. of County Commissioners, 17 Ohio St. 2d 35, 37 (1969); State v. Buckley, 16 Ohio St. 2d 128, 134 (1968); Porter v. Oberlin, 1 Ohio St. 2d 143, 151-152 (1965); 1975 Op. Att'y Gen. No. 75-001. Based upon these constitutional provisions, I concluded that a county officer's determination of a standard workweek for the purpose of overtime pay must be part of a uniform plan which applies equally to persons performing substantially the same jobs within that office. Of course, where persons are performing different jobs, their workweeks need not be the same, if such distinction is reasonably related to the jobs performed.

While 1975 Op. Att'y Gen. No. 75-078 concerned the authority of county officers other than county commissioners to determine full-time working hours for the purpose of overtime pay, the reasoning contained therein is applicable to the situation raised in your letter. There is no statutory requirement of uniformity of full-time working hours for the purpose of determining an employee's vacation leave pursuant to R.C. 325.19. The Ohio Constitution, through art. I, §2 and art. II, §26, serves to proscribe the establishment of different standard workweeks for persons employed by the board of county commissioners who perform substantially the same duties. Thus, I am of the opinion that a board of county commissioners may not establish a broad range of hours constituting full-time service, if such a range is applied indiscriminately to all employees regardless of their job duties.

In specific answer to your question, it is my opinion, and you are advised, that a board of county commissioners may establish different full-time schedules for different employees, provided that each full-time designation is reasonable in relation to the duties of the employees subject thereto and that employees performing substantially the same job functions are treated alike.