

**OPINION NO. 69-134****Syllabus:**

A county auditor is permitted to pay deputies for work on specified holidays if an overall plan has been established fixing compensation for holiday periods and the sheriff certifies to him that such payments are due and owing.

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**To: Lawrence S. Huffman, Allen County Pros. Atty., Lima, Ohio**  
**By: Paul W. Brown, Attorney General, October 8, 1969**

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

"Regularly appointed deputy sheriffs of Allen County, Ohio, have submitted claims for payment of holidays on which they worked during years before 1969. Assuming that these deputy sheriffs are able to prove that they worked on one or more of the holidays as set forth in Section 1.14, Revised Code of Ohio, for which they were not granted a compensatory day off, would the County Auditor be permitted to pay them for these holidays?"

"A search of the Revised Code reveals only one section which deals with vacation leave and holiday pay for county employees." Opinion No. 3464, Opinions of the Attorney General for 1962. The particular section of the Code, with

which my predecessor dealt, is Section 325.19, Revised Code. Paragraph two of that section states:

"In addition to such vacation leave, such county employee, working on a per diem basis, hourly basis, or salary basis, is entitled to eight hours of holiday pay for New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day, of each year, if he is a regular employee with at least six months full time county service prior to the month when such holiday occurs, except that interruption of service due to illness or injury caused or induced by the actual performance of official duties and not by an employee's negligence shall not affect such employee's right to holiday pay.  
\* \* \*."

It is evident that nothing in this section deals with the issue of additional pay to county employees who have worked upon the specified holidays. While Section 143.12 of the Revised Code does provide for employees who work on the listed holidays, those employees must receive their salaries in whole or in part, from the state. Since deputy sheriffs are compensated only by county funds, Section 143.12, supra, does not apply to them.

The provisions of Section 325.19, supra, fail to deal with the issue of county employees who work upon listed holidays. In the absence of specific statutory direction, attention must be directed to Section 325.17, Revised Code, which reads in 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, \* \* \*" (Emphasis added)

Within the limits of funds appropriated by the county commissioners, the sheriff may fix the compensation his deputies are to receive. In re Diemer, 17 O.N.P. N.S. 369, 25 O.D. N.P. 517 (1915). The use of the sheriff's discretion in fixing compensation was expressed in Opinion No. 1405, Opinions of the Attorney General for 1964:

"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 part of a uniform plan."

The opinion of my predecessor is an expression of the latitude given county sheriffs by Section 325.17, supra, in fixing the compensation of their deputies. The wording of Section 325.19, Revised Code, indicates that the listed holidays are not a part of the established work week.

Therefore, it is my opinion, and you are hereby advised,

that a county auditor is permitted to pay deputies for work on specified holidays if an overall plan has been established fixing compensation for holiday periods and the sheriff certifies to him that such payments are due and owing.