January 7, 2015

The Honorable Mark E. Kuhn
Scioto County Prosecuting Attorney
612 6th Street, Suite E
Portsmouth, Ohio 45662

SYLLABUS: 2015-001

1. An employee whose regular hours of service "for a county" total forty hours per week, divided between two, separate county agencies, is a "full-time employee," as defined in R.C. 325.19(K)(1).

2. An employee who is a "full-time employee," as defined in R.C. 325.19(K)(1), is subject to the terms of R.C. 325.19(A)(1) granting vacation leave with full pay to "[e]ach full-time employee in the several offices and departments of the county service."

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OPINION NO. 2015-001

The Honorable Mark E. Kuhn
Scioto County Prosecuting Attorney
612 6th Street, Suite E
Portsmouth, Ohio 45662

Dear Prosecutor Kuhn:

You have requested an opinion concerning the earning and accrual of vacation leave by a county employee. Specifically, you ask:

1. Does part-time employment with two county agencies for twenty hours a week each, for a total of forty hours combined, define an employee as a "full-time employee" in accordance with R.C. 325.19(K)(1)?

2. Does a part-time employee earn and accrue vacation leave when his regular hours of service for the county are forty hours a week, where the forty hours are obtained through separate employment with two county agencies on a part-time basis of twenty hours per week per employer?

Before addressing your specific questions, we begin with a summary of the principle developed in case law that a county officer, board, or other agency with the statutory power to employ has the concomitant authority to fix its employees' compensation, including fringe benefits such as paid vacation leave and sick leave.[1] 2009 Op. Att'y Gen. No. 2009-009, at 2-61;

[1] In some instances, an appointing authority's power to fix the compensation of its employees is expressly granted by statute. *See, e.g.*, R.C. 325.17 (a county auditor, treasurer, sheriff, clerk of court, engineer and recorder "may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, shall fix the compensation of those employees and discharge them…. The employees' compensation shall

Ebert v. Stark Cnty. Bd. of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); *Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984). Notwithstanding this authority, an employer may not provide to its employees fewer fringe benefits than those established by statute. *Ebert v. Stark Cnty. Bd. of Mental Retardation*, 63 Ohio St. 2d at 32 (statute providing sick leave benefits for county employees "neither establishes nor limits the power of a political subdivision. Rather, it ensures that the employees of such offices will receive at least a minimum sick leave benefit or entitlement"); *Cataland v. Cahill*, 13 Ohio App. 3d at 114 ("[s]ick leave and vacation leave prescribed by statute are minimums only and, where the appointing authority is authorized to establish compensation of employees, either sick-leave or vacation-leave benefits in addition to the minimums prescribed by statute may be granted as part of compensation"); 1998 Op. Att'y Gen. No. 98-026 (syllabus, paragraph 2) ("[a]n appointing authority that is empowered to hire county employees and fix their compensation may, if it chooses, grant them vacation leave in excess of the minimum entitlement prescribed by statute"). As summarized in 1981 Op. Att'y Gen. No. 81-052, "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." 1981 Op. Att'y Gen. No. 81-052, at 2-202.

R.C. 325.19 grants a minimum vacation leave benefit to "[e]ach full-time employee in the several offices and departments of the county service, including full-time hourly rate employees." R.C. 325.19(A)(1)-(3). A board of county commissioners may grant vacation leave with full pay to part-time county employees by resolution. R.C. 325.19(B). Notwithstanding these provisions, "any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county commissioners, establish alternative schedules of vacation leave and holidays for employees of the appointing authority," subject to restrictions concerning collective bargaining agreements. R.C. 325.19(F).

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not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for that office"); *see also* R.C. 305.17 (a board of county commissioners "shall fix the compensation of all persons appointed or employed" under R.C. 305.13-.16); R.C. 309.06 (a county "prosecuting attorney may appoint any assistants, clerks, and stenographers who are necessary for the proper performance of the duties of his office and fix their compensation, not to exceed, in the aggregate, the amount fixed by the judges of the court of common pleas").

Some appointing authorities are given explicit authority to establish their employees' fringe benefits. *See, e.g.*, R.C. 5126.05(A)(7) (a county board of developmental disabilities shall "[a]uthorize all positions of employment [and] establish compensation, including but not limited to salary schedules and fringe benefits for all board employees"); R.C. 5153.12 (a public children services agency "may establish compensation rates and vacation benefits for any of its employees").

Pursuant to R.C. 325.19(K), a "full-time employee" is "an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service." R.C. 325.19(K)(1). A "part-time employee" is "an employee whose regular hours of service for a county total less than forty hours per week, or who renders any other standard of service accepted as part-time by an office, department, or agency of county service, and whose hours of county service total at least five hundred twenty hours annually." R.C. 325.19(K)(2).

You ask whether an employee who works a total of forty hours per week, by working at two, separate county agencies for twenty hours a week each, is a "full-time employee," as defined in R.C. 325.19(K)(1). The General Assembly has enacted a twofold definition of "full-time employee." First, the statute defines a full-time employee as an employee whose "regular hours of service *for a county* total forty hours per week." R.C. 325.19(K)(1) (emphasis added). This part of the definition does not restrict those forty hours of service to one, individual county office, department, or agency. Rather, the General Assembly uses the broader, more general term "county" to refer to the county as a whole.

Different words appear in the second part of the definition, which provides that a full-time employee is an employee "who renders any other standard of service accepted as full-time by *an office, department, or agency of county service*."[2] R.C. 325.19(K)(1) (emphasis added). This part of the definition refers to individual divisions of county government—offices, departments, and agencies. Thus, we conclude that the General Assembly intended a different meaning by its use of different words and phrases. 2002 Op. Att'y Gen. No. 2002-033, at 2-217 ("[i]t is well settled that, where the General Assembly uses different terms in a statute, it is presumed that different meanings were intended" and "[t]he fact that the General Assembly refers to two different political subdivisions within R.C. 3769.04 indicates that it used the terms advisedly, knowing and intending their different meanings"). *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370 (1948) ("it has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"). Accordingly, an employee whose regular hours of service "for a county" total forty hours per week, even if that service is divided between two, separate county agencies, is a "full-time employee" as defined in R.C. 325.19(K)(1).

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[2] As an example of another standard of service accepted as full-time, a particular county appointing authority might determine that, for certain types of employees, working three twelve-hour shifts per week constitutes full-time employment despite not totaling forty hours per week. *See generally* 1998 Op. Att'y Gen. No. 98-026 (syllabus, paragraph 1) ("[a] county employee whose standard workweek set as full time by the appointing authority consists of fewer than forty hours per week and who is in active pay status for such standard workweek is entitled to a proportionate amount of vacation leave calculated on a biweekly basis as prescribed in R.C. 325.19(A)(2)").

In your second question, you ask whether an employee earns and accrues vacation leave under R.C. 325.19(A)(1) when his regular hours of service for the county are forty hours per week and the forty hours are obtained through separate employment with two county agencies on the basis of twenty hours per week per agency. We again turn to the plain language of the relevant statute. *See State ex rel. Cuyahoga Cnty. v. State Pers. Bd. of Review*, 82 Ohio St. 3d 496, 499, 696 N.E.2d 1054 (1998) ("[i]t is the duty of the court to give effect to the words used and not to insert words not used"). R.C. 325.19(A)(1) authorizes vacation leave for "[e]ach full-time employee in the several offices and departments of the county service." This provision relies on the definition of "full-time employee" set forth in R.C. 325.19(K)(1). As we conclude above, an employee whose regular hours of service for a county total forty hours per week is a "full-time employee" pursuant to R.C. 325.19(K)(1), for purposes of R.C. 325.19(A)(1). Thus, if an employee meets the definition of "full-time employee" set forth in R.C. 325.19(K)(1), the employee is subject to the terms of R.C. 325.19(A)(1) granting vacation leave with full pay to "[e]ach full-time employee in the several offices and departments of the county service."

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. An employee whose regular hours of service "for a county" total forty hours per week, divided between two, separate county agencies, is a "full-time employee," as defined in R.C. 325.19(K)(1).

2. An employee who is a "full-time employee," as defined in R.C. 325.19(K)(1), is subject to the terms of R.C. 325.19(A)(1) granting vacation leave with full pay to "[e]ach full-time employee in the several offices and departments of the county service."

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General