

April 16, 2019

The Honorable David P. Fornshell  
Warren County Prosecuting Attorney  
520 Justice Drive  
Lebanon, Ohio 45036

SYLLABUS:

2019-014

The board of education of a joint vocational school district has no authority to establish a sick leave donation program for nonteaching employees of the district who are not members of a collective bargaining unit.



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OPINION NO. 2019-014

The Honorable David P. Fornshell  
Warren County Prosecuting Attorney  
520 Justice Drive  
Lebanon, Ohio 45036

Dear Prosecutor Fornshell:

You have requested an opinion whether the board of education of a joint vocational school district may establish a sick leave donation program for employees of the district who are not teachers and are not members of a collective bargaining unit.<sup>1</sup> Your letter provides the following description of the proposed program:

[T]he sick leave donation program would allow non-teaching employees to donate unused sick leave accrued by those employees into a bank for the use of eligible employees. Upon application and approval, unused sick leave in the bank would be accessible to an eligible employee, meaning that an employee with a serious illness could exhaust his or her accrued sick leave and then access the donated sick leave in the bank, all accrued by other joint vocational school non-teaching employees. The board of education itself would not provide any additional sick leave. The donation program would consist only of donated leave accrued by other non-teaching employees. Nor would there be any cash payment or any other incentive to any employee to compensate them for donating the sick time to the donation program.

As a creature of statute, the board of education of a joint vocational school district possesses only those powers expressly granted by statute or necessarily implied in order to carry out an express power. 2011 Op. Att’y Gen. No. 2011-025, at 2-206. Several sections of the Revised Code authorize the board to hire nonteaching employees and to set their compensation. *See, e.g.*, R.C. 3311.19(A) and (E); R.C. 3319.02; R.C. 3319.081; R.C. 3319.082. As a component of compensation, the board is authorized to grant sick leave as a fringe benefit to its employees. R.C. 3319.141; *see also* 1981 Op. Att’y Gen. No. 81-052, at 2-202. The board may grant sick leave benefits in excess of those provided by statute, so long as that authority is not further restricted by a statute. *See Ebert v. Stark Cnty. Bd. of*

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<sup>1</sup> This opinion does not apply to any employees of the board of education who are members of a collective bargaining unit or who are subject to a collective bargaining agreement.

*Mental Retardation*, 63 Ohio St. 2d 31, 33, 406 N.E.2d 1098 (1980); 2011 Op. Att’y Gen. No. 2011-025, at 2-208.

R.C. 3319.141 states that sick leave benefits may be used by the employee for the following purposes: “absence due to *personal* illness, pregnancy, injury, exposure to contagious disease which could be communicated to others, and for absence due to illness, injury, or death in the *employee’s* immediate family.” (Emphasis added.) Identical statutory language appearing elsewhere in the Revised Code has been construed as a restriction upon an appointing authority’s power to establish a sick leave donation program. 2006 Op. Att’y Gen. No. 2006-026, at 2-223; 1987 Op. Att’y Gen. No. 87-029, at 2-210 (overruled on other grounds by 2013 Op. Att’y Gen. No. 2013-013). Because the language limits the acceptable uses of sick leave to an employee’s personal illness or injury, or to an illness, injury, or death of a member of the employee’s immediate family, an appointing authority has no authority to permit employees to use the sick leave benefits for another purpose. 1987 Op. Att’y Gen. No. 87-029, at 2-210. Here, the other purpose is using sick leave for illness or injury that is not personal to the employee who earned the benefit, or for illness, injury, or death that affects a person who is not a member of the earning employee’s immediate family. An appointing authority must have express statutory authority to establish a leave donation program that permits sick leave to be used for purposes other than the statutorily defined permitted uses.<sup>2</sup>

Based on the foregoing, it is my opinion, and you are hereby advised that the board of education of a joint vocational school district has no authority to establish a sick leave donation program for nonteaching employees of the district who are not members of a collective bargaining unit.

Respectfully,



DAVE YOST  
Ohio Attorney General

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<sup>2</sup> R.C. 124.391(C) authorizes a county legislative authority to implement a leave donation program for county agencies. Because a joint vocational school district is not a county agency, R.C. 124.391 does not provide the board of education with authority to establish the proposed sick leave donation program.