

OPINION NO. 86-099**Syllabus:**

1. Pursuant to R.C. 124.14(F), a board of county commissioners may grant the salary or wage supplement provided for therein to individual employees of a county human services department if, in the exercise of its discretion, the board determines that such payment is reasonable, and the board's determination is not an abuse of discretion. Such payment must also comport with the equal protection requirements of the United States and Ohio Constitutions.
2. Pursuant to R.C. 124.14(F), a board of county commissioners may grant the salary or wage supplement provided for therein to all employees of a county human services department who are serving in a particular classification if, in the exercise of its discretion, the board determines that such payment is reasonable, and the board's determination is not an abuse of discretion. Such payment must also comport with the equal protection requirements of the United States and Ohio Constitutions.
3. Pursuant to R.C. 124.14(F), a board of county commissioners may compute the salary or wage supplement provided for therein on the basis of an employee's base rate of pay under R.C. 124.15 or on the basis of the base rate of pay under R.C. 124.15 plus any supplements to which an employee may be entitled under R.C. 124.181 if, in the exercise of its discretion, the board determines that such methods of computation are reasonable, and the board's determination is not an abuse of discretion.

**To: William G. Sykes, Director, Ohio Department of Administrative Services,
Columbus, Ohio; John T. Corrigan, Cuyahoga County Prosecuting
Attorney, Cleveland, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your request for my opinion regarding interpretation of R.C. 124.14(F), which provides:

Employees of each county department of human services shall be paid a salary or wage in accordance with the rates set forth in section 124.15 of the Revised Code and progress in their employment pursuant to divisions (E), (F), and (G) of section 124.15 and section 124.181 of the Revised Code. The provisions

of section 124.18 of the Revised Code concerning the standard work week also apply to employees of county departments of human services. A board of county commissioners may establish a salary or wage supplement to be paid to employees of the county department of human services of that county in addition to the salary or wage required to be paid to them in accordance with section 124.15 of the Revised Code.

The provisions of this division do not apply to employees for whom the state employment relations board establishes appropriate bargaining units pursuant to section 4117.06 of the Revised Code.¹ (Emphasis and footnote added.)

The language authorizing a board of county commissioners to grant county human services employees a salary or wage supplement was added by Am. S.B. 96, 116th Gen. A. (1985) (eff. July 18, 1985).

I have rephrased your questions as follows:

1. Does R.C. 124.14(F), as amended by Am. S.B. 96, permit a board of county commissioners to grant a pay supplement to individual employees of a county human services department?
2. Does R.C. 124.14(F), as amended by Am. S.B. 96, permit a board of county commissioners to grant a pay supplement to all employees of a county human services department who are serving in a particular classification?
3. Does R.C. 124.14(F), as amended by Am. S.B. 96, permit a board of county commissioners to calculate the supplement on the basis of an employee's compensation as set by R.C. 124.15 and supplemented by R.C. 124.181?

Your first and second questions concern the extent of authority vested in a board of county commissioners to determine which employees may receive a pay supplement when the board decides to grant such supplement. More specifically, you have inquired whether R.C. 124.14(F) authorizes a board of county commissioners to grant a pay supplement to certain

¹ In 1986 Op. Att'y Gen. No. 86-052, I concluded that the exclusion of persons in an appropriate bargaining unit from the provisions of R.C. 124.14(F) does not apply to persons who have voted in a representation election to have no representative for collective bargaining purposes but, the exclusion does apply to persons who have been placed in an appropriate bargaining unit, but who have not yet voted in a representation election or who have voted and chosen an exclusive representative. See also 1984 Op. Att'y Gen. No. 84-092 (explaining the effect of the collective bargaining process on state and local laws concerning wages, hours, and terms and conditions of employment). I assume, for purposes of this opinion, that the employees about whom you have inquired are eligible to receive a wage supplement under R.C. 124.14(F).

individual human services employees or to all employees serving in a particular classification.²

R.C. 124.14(F) does not define the manner in which a board of county commissioners must grant wage supplements, the persons to whom supplements may be granted, other than stating such supplements may not be granted to employees in an appropriate bargaining unit, nor the amount or manner of calculating the supplements. The statute provides only that, "a board of county commissioners may establish a salary or wage supplement to be paid to employees of the county department of human services...in addition to the salary or wage required to be paid to them in accordance with [R.C. 124.15]," and does not otherwise limit the authority of the board of county commissioners with regard to the basis upon which such supplement may be established. While it is axiomatic that boards of county commissioners, as creatures of statute, have only those powers expressly conferred by statute or necessarily implied therefrom, see State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947); State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916), it is also a general principle that, in the absence of specific direction regarding the manner and method of performance of a duty, public officers have the implied authority to exercise reasonable discretion in performing their statutory duties. See State ex rel. Kahle v. Rupert, 99 Ohio St. 17, 122 N.E. 39 (1918) (all public officers are required to exercise an intelligent discretion in the performance of their official duties); State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915). 1986 Op. Att'y Gen. No. 86-023; 1984 Op. Att'y Gen. No. 84-096; 1981 Op. Att'y Gen. No. 81-026.

Thus, while county human services employees must still be paid in accordance with the rates set by R.C. 124.15 and progress in their employment pursuant to divisions (E), (F), and (G) of R.C. 124.15 and R.C. 124.181, R.C. 124.14(F) authorizes the board of county commissioners to supplement their wages or salaries in a manner determined by the board, so long as the manner chosen is reasonable. Therefore, if the board determines it is reasonable to grant supplements only to particular individuals, it may do so. Similarly, a supplement may be granted to all employees serving within a particular classification if, in the exercise of its discretion, the board determines such payment to be reasonable. Such determination of the board is, however, subject to judicial review for abuse of discretion. See State ex rel. Corrigan v. Seminatore, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981); 1982 Op. Att'y Gen. No. 82-006.

² As I summarized in 1985 Op. Att'y Gen. No. 85-038 at 2-133, n. 1:

A "classification" is defined as "a group of positions sufficiently similar in respect to duties, responsibilities, authority, and qualifications so that the same descriptive title may be used for each, the same pay range assigned, and the same examinations conducted."
 1 Ohio Admin. Code 123:1-47-01(A)(20). A "classification plan" is "a system of classifications and pay range assignment for each classification." Rule 123:1-47-01(A)(22). See 1 Ohio Admin. Code 123:1-7-03.

I note, also, that the granting of supplements must comport with the equal protection requirements of Ohio Const. art. I, §2 and the Fourteenth Amendment of the United States Constitution. See 1981 Op. Att'y Gen. No. 81-082 (a board of county commissioners may award county welfare department employees dental and eye care insurance superior to that afforded to other county employees if the distinctions in benefits awarded comport with the equal protection guarantees); 1981 Op. Att'y Gen. No. 81-062 (vacation and sick leave policies adopted by a community or technical college district which do not apply to all employees of the district must be reasonable to comport with the equal protection guarantees); 1978 Op. Att'y Gen. No. 78-057 (any distinctions which are drawn in awarding accumulated, unused sick leave must be reasonable to comport with the equal protection guarantees). The test applied to determine whether distinctions in compensation of public employees comport with equal protection is whether there is a reasonable basis for such distinctions. See Berenger v. Dunlavey, 352 F. Supp. 444, 447 (D. Delaware 1972), vacated as moot, 414 U.S. 895 (1973) ("[w]hile a state has discretion in the selection of privileges and rights it will confer on different classes of employees, the classification chosen must be reasonable"). Thus, if a board of county commissioners decides to grant supplements only to particular individuals or only to persons within a particular classification, it must have a reasonable basis for doing so. The board may not indiscriminately select certain individuals or groups of individuals over others without regard to the guarantees of equal protection.

Consistent with the above analysis, I must also conclude in response to your third question that, because the manner of calculating the supplement under R.C. 124.14(F) is not specified, the board may exercise its reasonable discretion in determining a proper method of calculation. R.C. 124.14(F) requires that the supplement be paid to human services employees "in addition to the salary or wage required to be paid to them in accordance with [R.C. 124.15]." Beyond this requirement, there appears to be no further limitation in R.C. 124.14(F) which would prevent a board of county commissioners from calculating the supplement provided for thereunder based upon an individual's rate of pay as set forth in R.C. 124.15 and supplemented under R.C. 124.181.⁴

Support for this conclusion is found in comparing the pay supplement provisions found in R.C. 124.181 with the language of R.C. 124.14(F). R.C. 124.181(B) requires that the supplements provided for under that section be computed on the basis of the classification salary base, which is the minimum hourly rate of the pay range in which an employee is assigned at the time of computation. See also 1 Ohio Admin. Code 123:1-37-02. In contrast to the provisions of R.C. 124.181, defining the manner of computation, R.C. 124.14(F) contains no provisions regarding computation of the wage or salary supplement provided for therein. It must, therefore, be assumed that the General Assembly intended to afford a board of

⁴ County human services employees may receive individual pay supplements under R.C. 124.181 when they meet the requirements therein, e.g., specified longevity, hazardous working conditions, bilingual abilities, shift differential, professional achievement, or teacher's educational attainment.

county commissioners greater discretion in determining the manner of computation for the wage or salary supplement granted to county human services employees under R.C. 124.14(F). The only direction provided for the computation of a pay supplement under R.C. 124.14(F) is that the supplement is to be paid to employees "in addition to the salary or wage required to be paid to them in accordance with [R.C. 124.15]." This portion of R.C. 124.14(F) serves only to reiterate that county human services employees are to be paid, at a minimum, in accordance with the rates set forth in R.C. 124.15; it does not, however, provide any direction as to how supplements to the rates in R.C. 124.15 are to be calculated. I conclude, therefore, that a board of county commissioners may, in its discretion, compute the salary or wage supplement under R.C. 124.14(F) in any reasonable manner. The board may determine to calculate the supplement on the basis of an employee's base rate of pay under R.C. 124.15 or on the basis of the base rate under R.C. 124.15 plus any supplements to which an employee is entitled under R.C. 124.181. Again, however, the board's determination is subject to judicial review for abuse of discretion. State ex rel. Corrigan v. Seminatore.

It is, therefore, my opinion and you are advised, that:

1. Pursuant to R.C. 124.14(F), a board of county commissioners may grant the salary or wage supplement provided for therein to individual employees of a county human services department if, in the exercise of its discretion, the board determines that such payment is reasonable, and the board's determination is not an abuse of discretion. Such payment must also comport with the equal protection requirements of the United States and Ohio Constitutions.
2. Pursuant to R.C. 124.14(F), a board of county commissioners may grant the salary or wage supplement provided for therein to all employees of a county human services department who are serving in a particular classification if, in the exercise of its discretion, the board determines that such payment is reasonable, and the board's determination is not an abuse of discretion. Such payment must also comport with the equal protection requirements of the United States and Ohio Constitutions.
3. Pursuant to R.C. 124.14(F), a board of county commissioners may compute the salary or wage supplement provided for therein on the basis of an employee's base rate of pay under R.C. 124.15 or on the basis of the base rate of pay under R.C. 124.15 plus any supplements to which an employee may be entitled under R.C. 124.181 if, in the exercise of its discretion, the board determines that such methods of computation are reasonable, and the board's determination is not an abuse of discretion.