

OPINION NO. 2013-041**Syllabus:**

2013-041

The requirement in R.C. 1901.32(A) and R.C. 1901.11(C) that a county pay two-fifths of the compensation of a municipal court bailiff includes payment of the value of the bailiff's sick leave that is accrued but unused at the time of the bailiff's retirement pursuant to R.C. 124.39(B). This requirement includes payment of the value of the bailiff's sick leave that is accrued but unused at the time of the bailiff's retirement when the amount of payment exceeds that authorized by R.C. 124.39(B) as a result of a policy adopted by a municipal corporation pursuant to R.C. 124.39(C).

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio

By: Michael DeWine, Ohio Attorney General, December 17, 2013

You have requested an opinion regarding the extent to which a county is obligated to fund payments to a bailiff for a municipal court operating within the county for the value of accrued, unused sick leave at the time of the bailiff's retirement from active service with the court. Specifically, you ask:

1. Is a county treasurer obligated to pay two-fifths of the amount due to a municipal court bailiff for his accrued, unused sick leave at the time of his retirement from active service with the municipal court?
2. If so, if a municipality adopts a policy under R.C. 124.39(C) allowing a bailiff to receive payment for more than one-fourth the value of the bailiff's unused sick leave or for more than the aggregate value of thirty days of the bailiff's unused sick leave at the time of his retirement, is the county treasurer obligated to pay two-fifths of accrued, unused sick leave that exceeds the payment permitted under R.C. 124.39(B)?

According to your letter, the Trumbull County Treasurer has paid two-fifths of the "salary compensation" of municipal court bailiffs serving in municipal courts operating in Trumbull County pursuant to R.C. 1901.32(A) and R.C. 1901.11(C). "However, the Treasurer has not paid any part of accrued but unused sick leave claimed as due by municipal court bailiffs upon their respective retirements."

Before we address your questions, we briefly discuss the municipal court system in Ohio and payment of the value of accrued, unused sick leave under R.C. 124.39. The municipal court system in Ohio is established and governed by the provisions of R.C. Chapter 1901. *See* Ohio Const. art. IV, § 1 (authority of General Assembly to establish courts inferior to the Ohio Supreme Court). R.C. 1901.01 establishes municipal courts in certain named municipalities, including several municipalities within Trumbull County. R.C. 1901.01(A).

R.C. 1901.32 provides for the appointment and compensation of the bailiffs

of municipal courts. The first sentence of R.C. 1901.32(A)(1) addresses compensation:

Except for the Hamilton county municipal court, *the court shall appoint a bailiff who shall receive the annual compensation that the court prescribes* payable in either biweekly installments or semimonthly installments, as determined by the payroll administrator, *from the same sources and in the same manner as provided in [R.C. 1901.11].* (Emphasis added.)

R.C. 1901.11, incorporated by reference in R.C. 1901.32(A)(1), addresses compensation of municipal court judges. R.C. 1901.11(A) and (B) set the amount of compensation municipal court judges receive. R.C. 1901.11(C) specifies the manner in which that compensation is to be paid. In particular, three-fifths of the compensation of a municipal court judge is payable from the city treasury and two-fifths is payable from the treasury of the county in which the municipal corporation is situated.¹ R.C. 1901.11(C). Opinions of the Attorney General have concluded that R.C. 1901.32(A)(1)'s reference to R.C. 1901.11 requires that a county pay two-fifths of a municipal court bailiff's compensation as specified in R.C. 1901.11(C). 2003 Op. Att'y Gen. No. 2003-020, at 2-157; 1965 Op. Att'y Gen. No. 65-056.

R.C. 124.39 establishes procedures for paying employees the value of the employees' accrued but unused sick leave. R.C. 124.39(B) provides:

Except as provided in division (C) of this section, an employee of a political subdivision covered by [R.C. 124.38] or [R.C. 3319.141] may elect, at the time of retirement from active service with the political subdivision, and with ten or more years of service with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of the employee's accrued but unused sick leave credit. The payment shall be based on the employee's rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the employee at the time payment is made. An employee may receive one or more payments under this division, but the aggregate value of accrued but unused sick leave credit that is paid shall not exceed, for all payments, the value of thirty days of accrued but unused sick leave.

R.C. 124.39(C) permits, but does not require, a political subdivision to enact a policy regarding payment for the value of accrued, unused sick leave that differs from the payments authorized under R.C. 124.39(B). R.C. 124.39(C) provides, in relevant part, as follows:

A political subdivision may adopt a policy allowing an employee

¹ The compensation of the judges of a county-operated municipal court, however, is payable from the treasury of the county in which the court is located. R.C. 1901.11(C). The municipal courts in Trumbull County are not county-operated municipal courts. See R.C. 1901.03(F) (listing the county-operated municipal courts); see also R.C. 1901.02.

to receive payment for more than one-fourth the value of the employee's unused sick leave or for more than the aggregate value of thirty days of the employee's unused sick leave, or allowing the number of years of service to be less than ten. The political subdivision may also adopt a policy permitting an employee to receive payment upon a termination of employment other than retirement or permitting more than one payment to any employee.

Your first question is whether a county is obligated to pay two-fifths of the amount due to a municipal court bailiff for the value of his accrued, unused sick leave at the time of his retirement. Your request letter does not dispute that the county must pay two-fifths of a municipal court bailiff's "compensation." See 2003 Op. Att'y Gen. No. 2003-020, at 2-157; 1965 Op. Att'y Gen. No. 65-056. Rather, the issue is whether payment of accrued, unused sick leave is "compensation" for purposes of R.C. 1901.32(A)(1).

R.C. 1901.32(A)(1) authorizes a municipal court to set the "annual compensation" of a municipal court bailiff. Statutory authority to fix "compensation" includes the authority to establish both salary and fringe benefits. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (fringe benefits such as the county's payments of health insurance premiums on behalf of county officers and employees "are as much a part of the compensations of office as a weekly pay check"); 2011 Op. Att'y Gen. No. 2011-026, at 2-221 n.9 ("[f]ringe benefits are a form of compensation"); 2006 Op. Att'y Gen. No. 2006-024, at 2-208 n.1. Sick leave is a fringe benefit. *Ebert v. Stark Cnty. Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 33, 406 N.E.2d 1098 (1980) ("[i]t should be obvious that sick leave credits, just as other fringe benefits, are forms of compensation"); 2008 Op. Att'y Gen. No. 2008-017, at 2-194 ("[a]s a general rule, compensation includes fringe benefits such as sick leave and vacation leave").

A municipal court bailiff, as an employee of a municipal court, may elect to receive payment for the value of any accrued sick leave that is unused at the time of his retirement pursuant to R.C. 124.39(B). See R.C. 124.01(F) (defining the term "employee" for purposes of R.C. Chapter 124); 1990 Op. Att'y Gen. No. 90-110, at 2-491 (employees of a municipal court are "employees" for purposes of R.C. Chapter 124). A prior Attorney General opinion concluded that "[u]nder Ohio law, the provision of a fringe benefit, such as sick leave or *payment for accrued, unused sick leave, constitutes part of the compensation of a public employee.*" 2005 Op. Att'y Gen. No. 2005-020, at 2-188 (emphasis added). Therefore, "compensation" includes payment of the value of an employee's accrued, unused sick leave.

No language in R.C. 1901.32 defines or explicitly enumerates the components of a municipal court bailiff's "compensation." Nor is there any other language in R.C. Chapter 1901 that defines or enumerates the components of a municipal court bailiff's "compensation" under R.C. 1901.32. When the General Assembly has intended to enumerate the components of "compensation," it has expressly so provided. See, e.g., R.C. 1901.11(E) (as used in R.C. 1901.11, "compensation" of a municipal court judge "does not include any portion of the cost, premium, or

charge for sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services, covering a judge of a municipal court and paid on the judge's behalf by a governmental entity"); R.C. 141.05 (as used in R.C. 141.05, "compensation" of a judge of the court of common pleas and a judge of the probate court "does not include any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination thereof, covering a judge of the court of common pleas or a judge of the probate court and paid on the judge's behalf by a governmental entity"); R.C. 1907.16(D) (as used in R.C. 1907.16, "compensation" of judge of a county court "does not include any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination of those benefits, covering a judge of the county court and paid on the judge's behalf from the treasury of the county in which the court is located"). If the General Assembly had intended to limit the elements of a municipal court bailiff's compensation under R.C. 1901.32(A), it could have enacted express language in R.C. 1901.32 comparable to that used in other statutes. *See State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Thus, in response to your first question, the requirement in R.C. 1901.32(A) and R.C. 1901.11(C) that a county pay two-fifths of the compensation of a municipal court bailiff includes payment of the value of the bailiff's sick leave that is accrued but unused at the time of the bailiff's retirement, pursuant to R.C. 124.39(B).

Your second question relates to R.C. 124.39(C). R.C. 124.39(B) authorizes payment of the value of sick leave that has been accrued but unused by an employee of a political subdivision at the time of the employee's retirement. An employee may receive payment for one-fourth the value of his accrued, unused sick leave credit and the payment shall not exceed the value of thirty days of accrued, unused sick leave. R.C. 124.39(B). Under R.C. 124.39(C), a political subdivision may enact a policy regarding payment for the value of accrued, unused sick leave that allows an employee to receive payment in excess of the amount of payment authorized by R.C. 124.39(B).² 2010 Op. Att'y Gen. No. 2010-030, at 2-222 ("R.C. 124.39(C) explicitly allows for variations in the application of R.C. 124.39(B) that will *increase* the benefits to employees"); 2007 Op. Att'y Gen. No. 2007-022, at 2-224 ("[d]ivision (C) of R.C. 124.39 authorizes a political subdivision to vary the terms of division (B) to grant employees greater sick leave payments"); *see also* 2005 Op. Att'y Gen. No. 2005-027, at 2-288 (R.C. 124.39(C) "authorizes a 'political subdivision' to make certain variations in the sick leave payment provisions described in R.C. 124.39(B)"); 2005 Op. Att'y Gen. No. 2005-020, at 2-191 to 2-193 (addressing authority of political subdivision to adopt a policy under R.C.

² A political subdivision may not, however, "implement a policy that provides lower benefits than those provided for in R.C. 124.39(B)." 2010 Op. Att'y Gen. No. 2010-030, at 2-222.

124.39(C)). Your letter mentions a situation in which a municipality has adopted a policy under R.C. 124.39(C) allowing a municipal court bailiff to receive payment for the value of accrued, unused sick leave that exceeds the amount of payment authorized by R.C. 124.39(B). Specifically, a municipality has adopted a policy under R.C. 124.39(C) allowing a municipal court bailiff to receive payment for more than one-fourth the value of the bailiff's unused sick leave or for more than the aggregate value of thirty days of the bailiff's unused sick leave at the time of his retirement, pursuant to R.C. 124.39(C). You ask whether a county treasurer's obligation to pay two-fifths of the compensation of a municipal court bailiff includes payment for the value of accrued, unused sick leave that exceeds the amount of payment authorized by R.C. 124.39(B).³

As previously discussed, R.C. 1901.32 does not define or enumerate the components of a municipal court bailiff's "compensation." Accordingly, we have concluded that "compensation" of a municipal court bailiff under R.C. 1901.32(A) includes payment for the value of accrued, unused sick leave under R.C. 124.39(B). We discern no reason that "compensation" should not also include the payment of the value of accrued, unused sick leave pursuant to a policy adopted under R.C. 124.39(C).

Further, a county's obligation to pay two-fifths of a municipal court bailiff's compensation is not restricted by the language of R.C. 1901.11(C). *See State ex rel. Cuyahoga Cnty. v. State Pers. Bd. of Review*, 82 Ohio St. 3d 496, 499, 696 N.E.2d 1054 (1998) (one must "give effect to the words used and not [] insert words not used"). Rather, the county's obligation to pay two-fifths of a municipal court bailiff's compensation under R.C. 1901.32(A) and R.C. 1901.11(C) remains unchanged even when a municipality adopts a policy under R.C. 124.39(C). Therefore, the requirement in R.C. 1901.32(A) and R.C. 1901.11(C) that a county pay two-fifths of the compensation of a municipal court bailiff includes payment of the value of the bailiff's sick leave that is unused at the time of the bailiff's retirement when the amount of payment exceeds that authorized by R.C. 124.39(B) as a result of a policy adopted by a municipal corporation pursuant to R.C. 124.39(C).

Based on the foregoing, it is my opinion, and you are hereby advised that the requirement in R.C. 1901.32(A) and R.C. 1901.11(C) that a county pay two-fifths of the compensation of a municipal court bailiff includes payment of the value of the bailiff's sick leave that is accrued but unused at the time of the bailiff's retirement pursuant to R.C. 124.39(B). This requirement includes payment of the value of the bailiff's sick leave that is accrued but unused at the time of the bailiff's retirement when the amount of payment exceeds that authorized by R.C. 124.39(B) as a result of a policy adopted by a municipal corporation pursuant to R.C. 124.39(C).

³ This opinion addresses only the county's obligation to pay two-fifths of compensation of a municipal court bailiff under R.C. 1901.32. It does not address the authority of a municipal corporation to adopt an alternative policy under R.C. 124.39(C) for payment of the value of accrued, unused sick leave for a municipal court bailiff. Rather, we assume for the purpose of this opinion that the municipal corporation has lawfully adopted an alternative policy under R.C. 124.39(C).