

**Note from the Attorney General's Office:**

1991 Op. Att'y Gen. No. 91-050 was questioned  
by 2008 Op. Att'y Gen. No. 2008-004.

1991 Op. Att'y Gen. No. 91-050 was overruled  
by 2009 Op. Att'y Gen. No. 2009-009.

**OPINION NO. 91-050****Syllabus:**

County appointing authorities may not vary the provisions of R.C. 325.19(C) that require a county appointing authority to pay an employee, at the time of separation, for unused vacation leave the employee was permitted to accumulate while in the employ of that appointing authority.

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**To: Brent A. Saunders, Gallia County Prosecuting Attorney, Gallipolis, Ohio**  
**By: Lee Fisher, Attorney General, December 31, 1991**

You have requested an opinion on the following question: "If the appointing authorities within a county agree, can an employee who transfers from one county office to another county office transfer [his] accumulated vacation pay?"

The matter of vacation leave benefits for county employees is governed by R.C. 325.19. Concerning the use of vacation leave and payment for unused vacation leave, R.C. 325.19(C) states in part:

Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment, provided the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than three years. An employee is entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit *at time of separation*, and in addition *shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment.* (Emphasis added.)

Thus, pursuant to R.C. 325.19(C), at the time a county employee separates from service, he is entitled to receive payment for any earned but unused vacation leave for the current year; in addition, the employee "shall be compensated" for any unused vacation leave he was permitted to accumulate for the three years preceding his last anniversary date of employment.

In the situation you describe, a county employee is transferring from the office of one county appointing authority to that of another appointing authority within the same county. As concluded in 1981 Op. Att'y Gen. No. 81-001 (syllabus, paragraph one):

When an individual leaves employment with one appointing authority of a county to become employed immediately by another appointing authority of that county, such a change in employment constitutes a "separation" for purposes of R.C. 325.19. Upon such separation, the employee is entitled to payment by the first appointing authority for vacation leave accumulated but unused during the period of employment with that appointing authority.

Thus, in the situation you describe, the employee is separating for purposes of R.C. 325.19, and is, therefore, entitled to payment for the unused vacation leave he has accumulated prior to separation from employment with that appointing authority.

Part of your question is whether the terms of R.C. 325.19(C) regarding payment of an employee's accrued, unused vacation leave may be varied by an agreement between the appointing authorities by whom the employee has been and will be employed. In particular, you ask whether those appointing authorities may agree to permit the employee to retain the vacation leave credit earned while in the employ of his former appointing authority after he becomes employed by a different appointing authority.

County appointing authorities have the power to fix their employees' compensation, including fringe benefits, to the extent such power is not constricted by applicable statutory provisions. *See, e.g.,* 1987 Op. Att'y Gen. No. 87-018 (county sheriff's authority to provide fringe benefits for his employees). *See generally* 1981 Op. Att'y Gen. No. 81-052 (discussing the extent to which an appointing authority's power to compensate may be restricted by statute). Thus, a county appointing authority may, to some extent, vary the provisions of R.C. 325.19 for that appointing authority's employees. *Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984) (concluding that R.C. 325.19 provides only a minimum number of hours of vacation leave for county employees which may be increased by the appointing authority pursuant to his power to prescribe compensation). As stated in 1987 Op. Att'y Gen. No. 87-063 at 2-388, however: "Although an appointing authority may grant vacation leave to employees beyond the minimum number of vacation leave hours to which an employee is entitled under the statute, R.C. 325.19 limits, among other things, the instances in which an employee may receive payment for such unused leave" (emphasis added).

Op. No. 87-063 addresses the circumstances in which an employee is entitled to receive payment for accumulated vacation leave, a slightly different issue from that with which you are concerned. The conclusion of Op. No. 87-063, however, that R.C. 325.19 limits the instances in which an employee may receive payment for accrued, unused vacation leave, which an appointing authority may not vary, also governs the present situation. R.C. 325.19(C) establishes only one method of disposition of those vacation leave benefits remaining to a county employee's credit at the time he separates from employment. R.C. 325.19(C) thus provides that, in such a situation, the appointing authority shall compensate (*i.e.,* pay) the employee for his unused vacation leave. Having prescribed this method, the General Assembly has restricted county appointing authorities in the disposition of an employee's unused vacation leave at the time of separation. Thus, it is beyond the power of individual county appointing authorities to vary the provisions of R.C. 325.19(C) that require a county appointing authority to pay an employee at the time of separation for unused vacation leave the employee was permitted to accumulate while in the appointing authority's employ.

Based upon the foregoing, it is my opinion, and you are hereby advised, that county appointing authorities may not vary the provisions of R.C. 325.19(C) that require a county appointing authority to pay an employee, at the time of separation, for unused vacation leave the employee was permitted to accumulate while in the employ of that appointing authority.