

OPINION NO. 87-018**Syllabus:**

1. Pursuant to his power to fix the compensation of his employees under R.C. 325.17, the county sheriff may grant his employees a fringe benefit designed to compensate his employees who are exempt from the overtime provisions of R.C. 4111.03 for overtime hours worked, if any, whether or not such hours are worked on a holiday, so long as any such benefit provides full-time employees, as defined in R.C. 325.19(G)(1), with the minimum holiday benefit required by R.C. 325.19(D).
2. The Fair Labor Standards Act, 29 U.S.C. §§ 201-216, 217-219, and 557 (1982 & Supp. III 1985), does not preclude the establishment by a county appointing authority of a fringe benefit which provides overtime compensation to employees who are exempt from coverage by the Fair Labor Standards Act.
3. The board of county commissioners may, pursuant to R.C. 5705.40, reduce the amount appropriated to the county sheriff for personal services in the sheriff's office, only where such action is reasonable. (1959 Op. Att'y Gen. No. 349, p. 198 and 1927 Op. Att'y Gen. No. 59, vol. I, p. 78 (syllabus, paragraph two), approved and followed.)

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 2, 1987

I have before me your opinion request concerning the compensation of certain employees of the county sheriff. I have stated your questions as follows:

1. May a county sheriff grant his nonclerical employees a fringe benefit, referred to as "holiday pay," for the purpose of compensating such employees for overtime hours, if any, whether or not such hours are worked on a holiday?
2. Does the Fair Labor Standards Act (FLSA) preclude the payment of such a fringe benefit to those employees who are not entitled to overtime compensation under the FLSA?
3. Once the board of county commissioners has appropriated a certain sum for the use of the sheriff's office and the sheriff has prescribed the compensation, including "holiday pay," for certain of his employees, may the county commissioners reduce the sum appropriated to the sheriff's office to an amount below that needed to pay the "holiday pay"?

The circumstances giving rise to the questions you ask are set forth in your letter as follows:

[E]very year during at least the past four (4)

administrations of the Miami County Sheriff's Department, the employees of the Sheriff's Department, excluding clerical staff, have received the equivalent of a 27th installment of pay. This compensation, as far as can be determined, was in the beginning entitled "Holiday Pay," when it was first included in the Sheriff's employees' compensation years ago. Over the many years, the name, although hardly accurate, has continued.

Presently, [in the contracts negotiated with the employees in both the sergeant and deputy bargaining units], this pay has been specified to compensate the sheriff's employees, except clerical personnel, for holidays worked but for which no compensatory days off were granted. For those non-union supervisory staff employees who have not been included in the bargaining unit, the so-called "Holiday Pay" has historically represented payment for unspecified, non-definitive, yet presumed, overtime, if any, worked during the calendar year including holidays and non-holidays. Over the years, the only sheriff employees who have not received this pay were the clerical employees, as previously mentioned.

As I understand the situation today, the Board of County Commissioners [does] not question that the members of the bargaining units previously mentioned are entitled to receive this 27th pay installment or its equivalent, because this obligation is set forth in writing via the collective bargaining contracts and is easily ascertainable. However, the issue presented is with respect to the staff employees who are supervisory non-union employees at the rank equivalent to lieutenant (who are not included in the present day collective bargaining unit contracts).

The Board of County Commissioners, in part, has inquired as to whether or not non-union employees are entitled to this so-called "Holiday Pay," since they have been designated by the sheriff as being under exempt status for purposes of the Fair Labor Standards Act. It is the position of the Board of Commissioners that the Fair Labor Standards Act precludes payment of this so-called "Holiday Pay."

....
Payment of the so-called "Holiday Pay" is no longer paid in a 27th paycheck. Presently, it is being included in one of the 26 bi-weekly paychecks of such employees.

In order to answer your questions, it is first necessary to examine the statutory scheme governing the appointment and compensation of employees of the county sheriff's office.¹ Pursuant to R.C. 325.17, those officers mentioned in R.C. 325.27, including the county sheriff:

¹ Since the facts set forth in your opinion request involve only employees who are not covered by a collective bargaining agreement, this opinion will not address the power of a county appointing authority to provide fringe benefits pursuant to such an agreement. See generally 1984 Op. Att'y Gen. No. 84-092 (discussing the operation of R.C. Chapter 4117 on the county level).

may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid biweekly from the county treasury, upon the warrant of the auditor. The amount of biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such employee would receive if he were paid semimonthly.

A county sheriff is, therefore, empowered to fix the compensation, including fringe benefits, of his employees. 1984 Op. Att'y Gen. No. 84-061. R.C. 325.17 does, however, limit the sheriff's authority by limiting the aggregate compensation for those employed in his office to "the amount fixed by the board of county commissioners for such office." See, e.g., County Commissioners v. Rafferty, 19 Ohio N.P. (n.s.) 97 (C.P. Henry County 1916); 1975 Op. Att'y Gen. No. 75-078; 1965 Op. Att'y Gen. No. 65-32; 1964 Op. Att'y Gen. No. 1405, p. 2-359; 1941 Op. Att'y Gen. No. 3600, p. 190 (interpreting G.C. 2981, currently at R.C. 325.17).

As stated in 1981 Op. Att'y Gen. No. 81-052 at 2-202: "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." The opinion further sets forth the framework within which any question concerning the provision of fringe benefits for public employees must be analyzed as follows:

Once the requisite authority to compensate has been established, any statutory provisions pertinent to the provision of the particular fringe benefit in issue by the public employer to its employees must be identified. If the particular fringe benefit is not the subject of any statutory provisions applicable to the public employer or its employees, the fringe benefit in question is a permissible exercise of the public employer's authority to compensate its employees. On the other hand, if the particular fringe benefit is the subject of any statutory provision applicable to the public employer or its employees, further consideration is required. If an applicable statute constitutes a minimum statutory entitlement to a particular benefit, the public employer may, pursuant to its power to compensate and in the absence of any statute constricting its action in the particular case, choose to provide such benefit in excess of the minimum statutory entitlement. If an applicable statute limits the general authority of the public employer to compensate its employees with the particular fringe benefit in question, it must, of course, be viewed as a restriction upon the employer's authority to grant the particular benefit.

Id.

The type of benefit about which you ask, which is designed to compensate an employee at a flat rate equivalent to two weeks' pay for overtime hours which may or may not be worked during the year and which may or may not occur on a holiday, requires an examination of the statutory provisions addressing overtime compensation and holiday pay for county employees. R.C. 325.19, concerning vacation leave and holiday pay for county employees, states in pertinent part:

(D) In addition to vacation leave, a full-time county employee is entitled to eight hours of holiday pay for New Year's day, Martin Luther King day, Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day, of each year. Holidays shall occur on the days specified in [R.C. 1.14]....If an employee's work schedule is other than Monday through Friday, he is entitled to holiday pay for holidays observed on his day off regardless of the day of the week on which they are observed.

....
(G) As used in this section:

(1) "Full-time employee" means 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.

Since R.C. 325.19 addresses holiday compensation for county employees, it is necessary to determine whether the statute restricts a county appointing authority in the provision of this benefit for his employees. 1969 Op. Att'y Gen. No. 69-134 addresses a similar question and concludes in the syllabus, that: "A county auditor is permitted to pay deputies for work on specified holidays if an overall plan has been established fixing compensation for holiday periods and the sheriff certifies to him that such payments are due and owing." The basis for the conclusion reached in Op. No. 69-134 is that, although R.C. 325.19 enumerates those days which shall be observed as holidays and entitles full-time county employees to receive pay for such holidays, it is silent as to those situations in which an employee may be required to work on a holiday. The opinion further reasons that, as part of an appointing authority's power to fix the compensation of his employees, he may provide for the payment of compensation for time worked in excess of an established workweek. The opinion concludes that since the holidays set forth in R.C. 325.19 are not part of the standard workweek for full-time county employees, the appointing authority may authorize the payment of compensation, presumably in addition to the holiday compensation prescribed by R.C. 325.19, to those of his full-time employees who work on such holidays. Cf. Cataland v. Cahill, 13 Ohio App. 3d 113, 114, 468 N.E.2d 388, 390 (Franklin County 1984) ("[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"); 1981 Op. Att'y Gen. No. 81-061 (syllabus, paragraph one) ("[a] board of township trustees may grant to its employees holiday pay in excess of the minimum entitlement set by R.C. 511.10"). Op. No. 69-134 does not, therefore, find those provisions of R.C. 325.19 concerning holiday compensation to be a restriction on the power of an appointing authority to

fix his employees' compensation. Compare R.C. 325.19(D) with R.C. 124.38 (as amended in 1974 Ohio Laws, Part II, 693 (Am. H.B. 513, eff. Aug. 9, 1974)), which was found by the court in Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) to be merely a minimum entitlement to sick leave benefits). Based upon the analysis set forth in Ebert, I agree with the conclusion in Op. No. 69-134 and find that R.C. 325.19(D) merely ensures that all full-time county employees will receive, at a minimum, the holiday compensation provided therein and does not prohibit a county appointing authority from granting his employees holiday pay in excess of the amount to which they may be entitled by statute.²

It appears, however, that in the situation you describe, the sheriff has prescribed the so-called "holiday pay" to compensate his employees for overtime hours worked, if any, whether or not such hours are worked on a holiday. R.C. 325.19(D), as discussed above, however, provides a minimum holiday benefit, and the county sheriff must, therefore, ensure that his policy does not grant less holiday compensation than that to which his employees are entitled by R.C. 325.19(D). Cf. Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d at 32, 406 N.E.2d at 1099-1100 ("R.C. 124.38 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" (emphasis in original)).

I now turn to a consideration of R.C. 4111.03 which establishes the rate at which an employer, as defined in R.C. 4111.01(D), shall compensate an employee, as defined in R.C. 4111.01(E), for overtime. The definition of "employer," set forth in R.C. 4111.01(D), includes political subdivisions, and, thus, a county is an employer for purposes of R.C. 4111.03. The term "employee," however, specifically excludes "[a] member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state." R.C. 4111.01(E)(7). Thus, the court in Meeks v. Papadopoulos, 62 Ohio St. 2d 187, 194, 404 N.E.2d 159, 164 (1980) held that:

R.C. 4111.03 of the Ohio Minimum Fair Wage Standards Act does not require the payment of overtime compensation to any member of a police or fire protection agency working for an employer as defined in R.C. 4111.01(D), as such persons were not intended by the General Assembly to be employees within the meaning of R.C. 4111.01(E)(7).

The court in Meeks specifically found that R.C. 4111.01(E)(7) excludes deputy sheriffs from the definition of the term "employee" and that deputies, therefore, are not entitled to be paid overtime compensation under R.C. 4111.03.³ 62 Ohio St. 2d at 194, 404 N.E.2d at 164.

² I note that, although R.C. 325.19(D) requires the payment of holiday compensation only to "a full-time county employee," there is no reason that the county sheriff may not extend the same type of benefit to his part-time employees as part of their compensation.

³ Your opinion request states that the employees about whom you ask are exempt from the provisions of the Fair

Although the overtime payment provisions of R.C. 4111.03 do not apply to deputy sheriffs, the question arises as to whether R.C. 4111.03 restricts the power of the county sheriff to provide overtime compensation to deputy sheriffs as a component of such deputies' compensation. My predecessor addressed a similar question in Op. No. 81-061, concerning the authority of a board of township trustees to grant overtime compensation to township firefighters who are exempt from the provisions of R.C. 4111.03. The opinion states at 2-248:

As the Supreme Court noted in Meeks, the exclusion from R.C. 4111.03 means that firefighters are not entitled, as a matter of statutory right, to receive overtime benefits. The fact that they are not entitled to such benefits pursuant to statute does not, however, mean that they may not receive them if the township trustees choose to grant such fringe benefits. Thus, I conclude that the exclusion of firefighters from R.C. 4111.03 does not restrict the authority of a board of township trustees to grant overtime benefits to township firefighters on whatever terms it deems appropriate. (Emphasis in original.)

I agree with my predecessor's analysis and find that R.C. 4111.03 does not prevent a county sheriff from granting overtime benefits to his employees who are not entitled to overtime compensation as provided for in R.C. 4111.03. See 1980 Op. Att'y Gen. No. 80-061 (syllabus, paragraph four) (a county children services board is authorized to fix its employees' compensation and may, therefore, grant overtime pay or compensatory time off to those employees who are exempt from the overtime provisions of R.C. 4111.03); Op. No. 75-078 (syllabus, paragraph one) ("[w]hen county employees are required to work in excess of forty hours in one work week, R.C. 4111.03 requires that such employees be paid at a rate of one and one-half times their regular rate for such extra time worked. However, county officers defined in R.C. 325.27 may, pursuant to their authority under R.C. 325.17 to fix compensation, establish a standard work week of less than forty hours for those employed in their respective offices and may pay an overtime rate for time worked in excess of that fixed standard"); 1964 Op. No. 1405 (prior to the enactment of R.C. 4111.03, found the power to grant overtime benefits arising from a county appointing authority's power to fix his employees' compensation under R.C. 325.17). See generally Meeks v. Papadopulos, 62 Ohio St. 2d at 193, 404 N.E.2d at 163 ("a construction of R.C. 4111.01(E)(7) which would mandate the payment of overtime compensation under R.C. 4111.03 to deputy sheriffs would be inconsistent with discretion afforded sheriffs under R.C. 325.17 to 'fix the compensation' of their deputies" (footnote omitted)).

In discussing the limitations which may exist with respect to the sheriff's authority under R.C. 325.17 to fix his

Labor Standards Act. I will not, therefore, address the overtime compensation requirements set forth therein. See generally Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976), which held that Congress was without authority to impose the minimum wage and overtime provisions of the Fair Labor Standards Act upon state and local governments in areas of traditional governmental functions).

employees' compensation, it is appropriate to address your second question in which you ask whether the Fair Labor Standards Act (FLSA) precludes payment of the holiday pay benefit which the sheriff prescribed for certain of his employees who, according to your letter, are exempt from the overtime provisions of that Act. See generally 29 U.S.C. § 213 (setting forth exemptions from the provisions of 29 U.S.C. § 206 (minimum wage) and 29 U.S.C. § 207 (maximum hours)). The county commissioners question whether the FLSA prohibits a county appointing authority from granting overtime benefits to those of his employees who are not entitled to such benefits under the FLSA. In interpreting Congress' finding and declaration of policy of the Fair Labor Standards Act, as set forth in 29 U.S.C. § 202, the Supreme Court stated: "The central aim of the Act was to achieve, in those industries within its scope, certain minimum labor standards" (emphasis added). Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 292 (1960). Accord Brennan v. Plaza Shoe Store, Inc., 522 F.2d 843, 846 (8th Cir. 1975) ("[t]he Fair Labor Standards Act was enacted to provide a minimal standard of living necessary for the health, efficiency, and general well-being of workers and to prescribe certain minimum standards for working conditions" (emphasis added)); Brennan v. Wilson Building, Inc., 478 F.2d 1090 (5th Cir. 1973), cert. denied, 414 U.S. 855 (1973).

The FLSA further states in pertinent part:

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter. (Emphasis added.)

29 U.S.C. § 218. In interpreting this provision, the court in Williams v. W.M.A. Transit Co., 472 F.2d 1258, 1261 (D.C. Cir. 1972) stated: "This section expressly contemplates that workers covered by state law as well as FLSA shall have any additional benefits provided by the state law--higher minimum wages; or lower maximum workweek. By necessary implication it permits state laws to operate even as to workers exempt from FLSA."

Examination of 29 U.S.C. §§ 202 and 218 makes it clear that the FLSA "was manifestly intended to place a floor under wages and a ceiling over hours of employment." White v. Witwer Grocer Co., 132 F.2d 108, 110 (8th Cir. 1942). I can find no reason, therefore, to conclude that the Fair Labor Standards Act prohibits a county appointing authority from granting compensation for overtime hours worked by employees who are exempt from coverage by the FLSA. See Op. No. 80-061 (finding that a county children services board may, pursuant to its authority to fix its employees' compensation, grant overtime

pay as a component of compensation to those of its employees who are not subject to R.C. 4111.03 because of their exemption from coverage under the FLSA).

Although no state or federal statute of which I am aware prohibits the county sheriff from granting his employees a fringe benefit of the type you describe, so long as it provides at least the minimum holiday benefit prescribed by R.C. 325.19, it is also necessary to discuss the extent to which R.C. 325.17 itself limits the sheriff's power to fix his employees' compensation. As set forth above, those officers authorized by R.C. 325.17 to fix the compensation of their employees are limited by the requirement that: "Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office." R.C. 325.17. The county commissioners' powers in relation to those of individual appointing authorities under R.C. 325.17 (and its predecessor, G.C. 2981) have been discussed in many prior opinions of this office. The syllabus of 1927 Op. Att'y Gen. No. 1339, vol. IV, p. 2432, sets forth the general rule, stating:

Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices; and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk [hire], may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices.

See also 1938 Op. Att'y Gen. No. 1957, vol. I, p. 373 (syllabus, paragraph one) ("[c]ounty commissioners cannot restrict the county auditor in the matter of payment for services rendered by deputies, assistants, clerks, etc., to county officers, beyond the limitations in [G.C. 5625-38 (currently at R.C. 5705.46) (concerning the payment of current payrolls by political subdivisions)]"); 1927 Op. Att'y Gen. No. 59, vol. I, p. 78 (syllabus, paragraph one); 1926 Op. Att'y Gen. No. 3429, p. 253 (syllabus, paragraph two) ("county commissioners have no authority to fix the compensation of deputies, assistants, clerks and other [employees] of the officers mentioned in [G.C. 2978 (R.C. 325.28)], except that they may limit the aggregate amount which may be expended for such purpose"). It is clear, therefore, that the authority of the officers acting pursuant to R.C. 325.17 to fix the compensation of their employees is subject to the limitation that the compensation of such employees "shall not exceed, in the aggregate, the amount fixed by the board of county commissioners for such office" (emphasis added). 1964 Op. No. 1405 at 2-360. Accord County Commissioners v. Rafferty: Op. No. 75-078.

Since the county commissioners fix the sum for each of the offices mentioned in R.C. 325.27 by the appropriation of funds

as described in R.C. 5705.38,⁴ it is appropriate at this point to address your third question. You ask whether the board of county commissioners, after having appropriated a certain sum for the use of the sheriff's office, may reduce such appropriation below the amount needed by the officer who, acting pursuant to R.C. 325.17, had fixed the compensation of his employees based upon the full amount which had been appropriated for his office for that year. This question was addressed in part by one of my predecessors in 1959 Op. Att'y Gen. No. 349, p. 198, which concludes in the syllabus:

Where the county commissioners have, pursuant to the provisions of Section 5705.38, Revised Code, made an annual appropriation covering the amount of the allowed payrolls for clerks, deputies and other employees in the county offices, the county commissioners have authority under Section 5705.40, Revised Code, to amend and reduce such appropriations.

Accord 1927 Op. No. 59 (syllabus, paragraph two). With regard to the powers of the board of county commissioners to amend appropriations, R.C. 5705.40 states: "Any appropriation ordinance or measure may be amended or supplemented, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation and that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation." See generally 1933 Op. Att'y Gen. No. 192, vol. I, p. 239 (discussing limitations on power of county commissioners to amend appropriations). The limitations imposed by R.C. 5705.40 with respect to appropriations for salaries of persons employed

⁴ R.C. 5705.38 states in pertinent part:

(A) This division does not apply to school district appropriation measures. On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until not later than the first day of April of the current year, and the appropriations made therein shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed.

....
(C) Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services.... (Emphasis added.)

under G.C. 2981 (now R.C. 325.17) were discussed in 1927 Op. No. 59 which concludes that the salaries of those persons employed under G.C. 2981 (now R.C. 325.17) do not constitute unliquidated or outstanding contracts or obligations for purposes of G.C. 5649-3h (analogous provision now at R.C. 5705.40). The opinion then concludes that since the only restrictions applicable to the amendment of an appropriation by the board of county commissioners were those restrictions imposed by G.C. 5649-3h, and since none of those restrictions applied with respect to appropriations for salaries in the various county offices, the county commissioners "may amend their appropriation measure and reduce the amount that was originally appropriated for salaries for deputies and assistants in the various county offices." 1927 Op. No. 59 at 79.

I note, however, that the power of the county commissioners to amend salary appropriations is not unlimited. The board may not exercise its discretion in an arbitrary manner, but instead must do so in a sound and reasonable manner. 1941 Op. No. 3600; 1927 Op. No. 1339; 1926 Op. No. 3429. Whether a particular amendment to an appropriation is reasonable and, therefore, valid is dependent upon many factors which those at the local level are best able to evaluate. In this regard, 1941 Op. No. 3600 states in paragraph three of the syllabus: "The courts will not attempt to control the discretion of county commissioners, and other officers, boards and commissions having...discretionary powers and authority, and will interfere only where there is an usurpation or unlawful exercise of power, fraud or such gross abuse of discretion as amounts to fraud."

R.C. 325.17 specifically authorizes the county sheriff, among others, to employ the necessary employees and to fix their compensation. While the county sheriff may not prescribe his employees' compensation in such a manner that the aggregate compensation for his employees exceeds the amount appropriated for the sheriff's office by the board of county commissioners, no statute of which I am aware empowers the board of county commissioners to dictate those fringe benefits which a county appointing authority may prescribe for his employees.⁵ Rather, it is the appointing authority, pursuant to his power to fix his employees' compensation, who is authorized to determine the fringe benefits, in addition to those prescribed by statute, which his employees will receive. Op. No. 84-061 at 2-198 ("R.C. 325.17 authorizes various officers...to appoint and employ necessary...employees and to fix such employees' compensation. As part of a county officer's power to compensate his employees, he may grant his employees various fringe benefits....An appointing authority's power to fix his employees' compensation is, however, subject

⁵ I note, however, as discussed in Op. No. 84-092, the General Assembly has granted boards of county commissioners limited authority with respect to the compensation of county employees for whom the boards are not the appointing authorities. E.g., R.C. 124.39(C) (authorizing county commissioners to vary the unused sick leave payment policy prescribed for county employees by R.C. 124.39(B)); R.C. 305.171 (authorizing county commissioners to procure and pay for various group insurance policies for county officers and employees and their immediate dependents).

to any statutory restrictions upon such power" (citations omitted)).

In 1941 Op. No. 3600, one of my predecessors discussed the interplay between the board of county commissioners' power of appropriation and the power of the county sheriff to fix the compensation of his employees. The opinion concludes in paragraph one of the syllabus, that the board of county commissioners had acted without authority in passing a resolution which provided that "the appropriation for deputy and clerk hire shall be reduced to the extent of fifty per centum of the amount appropriated for any deputy or employee appointed who is the spouse or a member of the appointing officer's family." 1941 Op. No. 3600 concludes at 195-96:

2. The county commissioners are without authority to name the deputies and other [employees] in the office of the county treasurer and the other county offices enumerated in [G.C. 2981 (now R.C. 325.17)]; nor may they limit or abridge the duly vested appointing power of the proper officer.

3. It logically follows that they may not by indirection do what they are not directly authorized to do, and that the resolution set forth in your request is consequently invalid. The commissioners are required to act in a reasonable manner on the question of compensation for county deputies and [employees] and they are without authority to provide that if a county officer appoints persons of a certain class the appropriation for his office shall be automatically reduced. Certainly the commissioners may not by the method described in your communication limit or in anywise take from the county treasurer, or other county officer, any of the appointing power vested in such officers by the Legislature.

In the situation you present, the sheriff, based upon the amount which had been appropriated for personal services in his office, granted certain of his employees a benefit referred to as "holiday pay." The county commissioners then reduced the annual appropriation to the sheriff's office to such an extent that the sheriff will be unable to pay his employees this particular component of the compensation which he had prescribed for them based on the former appropriation for that year. As set forth above, since the action of the county commissioners in the situation you describe may be based upon several factors, it is not possible for me to determine whether the board's action in reducing the appropriation for the sheriff's office is reasonable.⁶ Rather, any such determination is best made by those at the local level.

⁶ Should any of the sheriff's employees who have been receiving this benefit be in the classified civil service, see generally Yarosh v. Becane, 63 Ohio St. 2d 5, 406 N.E.2d 1355 (1980) (explaining the differences in duties performed by deputy sheriffs in the unclassified service and the classified service), some question may arise as to whether a reduction in pay under R.C. 124.34 has occurred. See State ex rel. Bassman v. Earhart, 18 Ohio St. 3d 182, 480 N.E.2d 761 (1985).

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

1. Pursuant to his power to fix the compensation of his employees under R.C. 325.17, the county sheriff may grant his employees a fringe benefit designed to compensate his employees who are exempt from the overtime provisions of R.C. 4111.03 for overtime hours worked, if any, whether or not such hours are worked on a holiday, so long as any such benefit provides full-time employees, as defined in R.C. 325.19(G)(1), with the minimum holiday benefit required by R.C. 325.19(D).
2. The Fair Labor Standards Act, 29 U.S.C. §§ 201-216, 217-219, and 557 (1982 & Supp. III 1985), does not preclude the establishment by a county appointing authority of a fringe benefit which provides overtime compensation to employees who are exempt from coverage by the Fair Labor Standards Act.
3. The board of county commissioners may, pursuant to R.C. 5705.40, reduce the amount appropriated to the county sheriff for personal services in the sheriff's office, only where such action is reasonable. (1959 Op. Att'y Gen. No. 349, p. 198 and 1927 Op. Att'y Gen. No. 59, vol. I, p. 78 (syllabus, paragraph two), approved and followed.)