## OPINION NO. 87-109

**Syllabus:**

1. Pursuant to Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), section 23 (uncodified), an employee who transfers from an abolished bureau of support, local Title IV-D agency, or program for administration and enforcement of support to a newly designated child support enforcement agency pursuant to uncodified section 23 is entitled to maintain his civil service classification and status upon such transfer for purposes of the civil service scheme set forth in R.C. Chapter 124; the newly designated child support enforcement agency then has the same functions, powers, duties, and obligations under R.C. Chapter 124 with respect to such transferred employee's status and classification as did the abolished bureau, agency, or program from which such employee transferred.

2. The term "benefits earned," as used in Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5,

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[3] I note that along with your letter of request, you included a copy of a journal article which concludes that under the Copyright Act, a library may not impose any fee along with the lending of a copyrighted videotape. This conclusion appears to have been based on the assumption that the Record Rental Amendment of 1984, Pub.L. 98-450, Oct. 4, 1984, 98 Stat. 1727, (1984), applies to the rental of videotapes. By its express terms, however, the provisions of this amendment apply only to "nondramatic musical works." _See_ 17 U.S.C. §115 (1984). Thus, because the videotapes in question are considered dramatic audiovisual works under the Act, _see_ _Redd Horne_, 568 F.Supp. at 499, the provisions of the 1984 amendment are inapplicable. _See also_ 3 Nimmer, _Copyrights_ §8.12[B], n.43.8 (1986).

> 1987), section 23 (uncodified), refers to a benefit, like vacation leave, earned by an employee, but unused or for which the employee was not compensated, while employed by the abolished bureau, agency, or program from which the employee transferred pursuant to uncodified section 23.

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**To: Patricia Barry, Director, Department of Human Services, Columbus, Ohio**
**By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1987**

I have before me your opinion request concerning the implementation of portions of Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), providing, in part, a new system of child support enforcement throughout the state. R.C. 2301.35(A) (eff. until June 6, 1988), as amended in Sub. H.B. 231, requires that the board of county commissioners, acting on or before November 15, 1987, designate, and enter into a contract with, the county department of human services, the office of the prosecuting attorney, a bureau within the court of common pleas, or a separate agency under the direct control of the board of county commissioners to act as the child support enforcement agency for the county. See generally R.C. 2301.35(D) (concerning the requirements for a contract between the board of county commissioners and the newly designated child support enforcement agency). Sub. H.B. 231, section 23 (uncodified) provides that upon designation of a new child support enforcement agency, the agency's predecessor agencies, programs, or bureaus are abolished.

Uncodified section 23 specifically provides for the transfer of all employees of the abolished bureaus of support, local Title IV-D agencies, or the programs for administration and enforcement of support to the newly designated child support enforcement agencies and for the retention by such transferred employees of "their respective civil service classifications and status." In light of these provisions of uncodified section 23, your letter states your concern that, upon establishment of the new child support enforcement agencies, "[t]here will be in many cases a need to change job duties and classifications [or] possibly lay off employees due to lack of work after the employee is transferred to a receiving agency." You specifically ask, "whether the retention of the civil service classification and status is only at the time of transfer or whether the existing civil service classification and status is retained by the employee throughout his or her tenure at the receiving agency."

The phrase "civil service classifications and status," as used in uncodified section 23 of Sub. H.B. 231, is not defined by statute. Reference to such terminology as used in R.C. Chapter 124 governing the statutory civil service scheme is, therefore, necessary. See generally R.C. 124.01(A) (as used in R.C. Chapter 124, "civil service" includes "all offices and positions of trust or employment in the service of the state and the counties...").

R.C. 124.14(A) requires the Director of Administrative Services to promulgate rules for the establishment of a classification plan for county agencies. Accordingly, the Director has promulgated 1 Ohio Admin. Code Chapter 123:1-8, setting forth, among other things, requirements for the classification of positions in the county service and criteria

for classification specifications. The term "classification," as used in 1 Ohio Admin. Code Chapter 123:1-8, is defined in 1 Ohio Admin. Code 123:1-47-01(A)(20) 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. "Classification" also means the position, office or employment identified in the administrative rules by classification number and classification title with the same assigned pay range.

In the absence of a different statutory definition of the word "classifications," as used in uncodified section 23 of Sub. H.B. 231, such term should be given the meaning assigned by rule 123:1-47-01(A)(20). See R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly").

Similarly, the term "status," as used in uncodified section 23, is not defined by statute. Rule 123:1-47-01(A)(77), however, defines "status," as used in 1 Ohio Admin. Code Chapters 123:1-1 to 123:1-47, as meaning, "a type of appointment, such as provisional, certified, or unclassified." See generally R.C. 124.11(A) (positions in the unclassified service); R.C. 124.27 (certified appointments); R.C. 124.30(A) (authorizing the filling of a position in the classified service on a provisional basis).

Concerning the rights of employees transferred pursuant to Sub. H.B. 231 to a newly designated child support enforcement agency, uncodified section 23 merely states that: "All of the employees who are transferred pursuant to this section shall retain their respective civil service classifications and status...." You question whether the above-quoted language of uncodified section 23 requires the employee to remain in the same civil service classification and status throughout his tenure with the newly designated child support enforcement agency or whether the employee retains such classification and status only at the time of transfer.

It is well settled that in the interpretation of a single sentence within a statute, the sentence should not be read outside the context of the entire enactment. Rather, the entire enactment should be examined in order to determine the legislative intent. Black-Clawson Co. v. Evatt, 139 Ohio St. 100, 38 N.E.2d 403 (1941). In uncodified section 23, which provides for the transition from the former method of child support enforcement to the handling of such function by a child support enforcement agency as specified in R.C. 2301.35, the General Assembly assigned to the newly designated child support enforcement agencies all the powers, duties, functions, and

obligations of their predecessors.[1] As summarized in 1987

[1] Uncodified section 23 of Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987) states in part:

> For the purpose of the succession to all functions, powers, duties, and obligations of the abolished bureau of support, abolished local Title IV-D agency, or abolished program that are transferred to the newly designated child support enforcement agency, the newly designated child support enforcement agency shall be deemed to be a continuation of the abolished bureau of support, abolished local Title IV-D agency, or abolished program.
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> All employees of the bureaus of support, of the local Title IV-D agencies, or of the programs for administration and enforcement of support that are abolished by this act shall be transferred to the child support enforcement agencies that are designated under section 2301.35 of the Revised Code, as amended by this act, on the date on which the agency is designated under section 2301.35 of the Revised Code, as amended by this act. All of the employees who are transferred pursuant to this section shall retain their respective civil service classifications and status and all vacation time and other benefits earned by employees of the abolished bureau of support, local Title IV-D agency, or program shall be deemed to have been earned by them as employees of the newly designated child support enforcement agency. Any employee who, at the time of transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination, or termination as though the transfer was not made.
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> All business or other matters undertaken or commenced by the abolished bureau of support, the abolished local Title IV-D agency, or the abolished program for administration and enforcement of support pertaining to the functions, powers, duties, and obligations of the abolished bureau of support, local Title IV-D agency, or program that are transferred to the newly designated child support enforcement agency shall be conducted and completed by the child support enforcement agency that is designated pursuant to this act in the same manner and under the same terms and conditions and with the same effect as if conducted by the abolished bureau, abolished agency, or abolished program.
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> All acts, determinations, approvals, and decisions of the abolished bureau of support, abolished local Title IV-D agency, or the abolished program for administration and enforcement of support shall continue in effect as the acts, determinations, approvals, and decisions of the newly designated child support enforcement agency.
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> No existing right or remedy of any character shall be lost, impaired, or affected by this act, except to the extent that the newly

Op. Att'y Gen. No. 87-094, slip op. at 9: "[Pursuant to uncodified section 23,] it is clear that the newly designated child support enforcement agencies are to be a continuation of their predecessors for all purposes related to the functions, powers, duties, and obligations transferred to such new agencies."

Specifically concerning the employment status of the transferred employees, uncodified section 23 states: "[A]ll vacation time and other benefits earned by employees of the abolished bureau of support, local Title IV-D agency, or program shall be deemed to have been earned by them as employees of the newly designated child support enforcement agency." I note that by specifying that the employees transferred pursuant to this section maintain their civil service classification and status, the General Assembly appears to have intended that the civil service scheme set forth in R.C. Chapter 124 apply to such transferred employees to the same extent and in the same manner as in their previous employment. Further, when this portion of uncodified section 23 is read in conjunction with the provision making the newly designated child support enforcement agency a continuation of its predecessor for purposes of the succession to the functions, powers, duties, and obligations transferred to the new agency, it appears that the General Assembly intended that the new agencies have the same functions, powers, duties, and obligations with respect to the civil service scheme governing the transferred employees as did their predecessors. See Op. No. 87-094.[2] Thus, to the extent that their predecessors

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> designated child support enforcement agency administers the rights and remedies instead of the abolished bureau of support, the abolished local Title IV-D agency, or the abolished program for administration and enforcement of support.
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> No action or proceeding pending on the effective date of this act brought by or against the abolished bureau of support, the abolished local Title IV-D agency, or the abolished program for administration and enforcement of support shall be affected by any provision of this act, but the pending action or proceeding may be prosecuted or defended in the name of the newly designated child support enforcement agency. In all pending actions and proceedings, the newly designated child support enforcement agency, upon application to the court, shall be substituted as a party.

2 R.C. 2301.35 authorizes the county commissioners to designate, among others, a bureau within the court of common pleas as the county's child suport enforcement agency. The authority of courts of common pleas to hire and compensate employees was recently addressed in 1987 Op. Att'y Gen. No. 87-063 which found that, "the portions of R.C. 325.19 limiting the use of and payment for unused vacation benefits limit the power of common pleas courts to fix their employees' compensation." Op. No. 87-063 at 2-391. The opinion also addressed the fact that, for purposes of vacation leave, a component of compensation, common pleas court employees are county employees. Thus, as discussed in Op. No. 87-063, note 4, although courts of common pleas have certain inherent powers, with respect to the employment of personnel, the courts, as other nonjudicial county appointing authorities, are limited to those powers granted by statute.

were obligated by the civil service scheme set forth in R.C. Chapter 124 to retain their employees, see, e.g., R.C. 124.321-.328 (layoff of employees and abolishment of positions); R.C. 124.34 (reduction, suspension, and removal of classified employees), the newly designated child support enforcement agencies maintain the same obligations.

In summary, pursuant to Sub. H.B. 231, section 23 (uncodified), at the time an employee transfers from an abolished bureau, agency, or program to a newly designated child support enforcement agency, he is entitled to maintain his civil service classification and status, as those terms are defined in rule 123:1-47-01(A), for purposes of the civil service scheme set forth in R.C. Chapter 124. Uncodified section 23 vests in the newly designated child support enforcement agency the same functions, powers, duties, and obligations under R.C. Chapter 124 with respect to such transferred employee's status and classification as were imposed upon the abolished bureau, agency, or program from which such employee transferred.

Your second concern is set forth in your opinion request as follows:

> [W]hat is the meaning of and the application of the term "benefits" in the section 23 requirement that "...all vacation time and other benefits earned by employees of the abolished bureau of support, local Title IV-D agency, or program shall be deemed to have been earned by them as employees of the newly designated child support agency"? Does this apply solely to accrued vacation and sick leave or does it require an all inclusive prospective application of "benefits" the employee had under the former employer?
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> For example, some employees transferring into the receiving agency may have previously worked for an employer who provided a 35-hour work week, paid lunch hours, holidays, personal, sick or vacation days, free parking, insurance coverage, etc. which is not provided by the receiving agency. In other situations, an employee may have been a bargaining unit member at a CDHS but is transferred to a CSEA or other employer not covered by a collective bargaining agreement. In still other cases, the employee may not have been covered by a collective bargaining agreement and will be transferring into a bargaining unit. Does the term "benefits" as used in section 23 of Sub. H.B. 231 include bargaining unit or exempt status, hours worked, paid leave or other conditions associated with employment with the former employer? Also, can a new "benefit" replace a former "benefit" if the employee receives a higher salary or other fringe benefit at the new agency but loses a paid lunch hour or other benefit [from] the former employer?

Although part of your question asks about the meaning of the term "benefits," I will first address the treatment of such benefits required by the above-quoted language of uncodified section 23.

Uncodified section 23 provides, in part, for the abolishment of the predecessor bureau of support, local Title IV-D agency, or program upon the designation of the new child support enforcement agency in accordance with R.C. 2301.35, as amended in Sub. H.B. 231. Further, employees of the abolished

bureau of support, local Title IV-D agency, or program are transferred to the newly designated child support enforcement agency "on the date on which the agency is designated under [R.C. 2301.35], as amended by this act." Sub. H.B. 231, section 23 (uncodified). The portion of uncodified section 23 about which you ask speaks of benefits "earned by employees of the abolished bureau of support, local Title IV-D agency, or program." (Emphasis added.) This language clearly refers to vacation and other benefits already "earned" by an employee or any attribute of employment which accrued to a particular employee and for which he was not compensated while in the employ of the predecessor of the newly designated child support enforcement agency. Rather than requiring that the policies of the abolished bureau, agency, or program governing such things as paid lunch hours, holidays, free parking, and hours worked be imposed upon the newly designated child support enforcement agency with respect to employees who have transferred to the new agency,[3] this portion of uncodified section 23 merely requires that the new agency recognize any benefits which such employees earned and for which they were not compensated while in the employ of the new agency's predecessor.

The portion of uncodified section 23 about which you ask appears to have been included to comply with the principle set forth in Ebert v. Stark County Bd. of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), that fringe benefits which are a component of compensation, once earned by a public employee, are a vested right of the employee and may not be retroactively revoked. The issue in Ebert was whether a county board of mental retardation, having granted its employees sick leave benefits in excess of that provided for by R.C. 124.38, could then amend its policy and reduce the number of hours of sick leave which its employees had accumulated to only the amount to which they were entitled by statute. The court examined the power of the county board as an appointing authority and discussed the following limitations on the board's power to fix its employees' compensation, stating:

> While the board's statutory authority includes the power to modify its sick leave policy and reduce the benefits to the level prescribed by R.C. 124.38, such reduction could only operate in a prospective manner. The sick leave credits once earned became a

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[3] I note, however, that anything which falls within the term "wages, hours, and terms and conditions of public employment," as that term is used in R.C. 4117.10(A), may be subject to the terms of a collective bargaining agreement. See 1987 Op. Att'y Gen. No. 87-094 (syllabus) ("[w]here, pursuant to Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), a county designates a separate agency under the direct control of the board of county commissioners as the new child support enforcement agency for the county and such designation results in the transfer to such new agency of persons who were formerly employed by the county department of human services and who were covered by a collective bargaining agreement in their employment with the county department of human services, the newly designated agency...is bound by any obligations imposed upon its predecessor by a collective bargaining agreement covering such transferred employees in their previous employment with the county department of human services").

> vested right of [the employees]. Such accrued credits could not be retroactively revoked. (Footnote omitted.)

63 Ohio St. 2d at 33-34, 406 N.E.2d at 1100. The portion of uncodified section 23 concerning employee benefits, therefore, operates to ensure that any benefits already earned by a transferred employee but for which the employee was not compensated in his employment with the abolished bureau of support, local Title IV-D agency, or program be recognized and placed to his credit by the newly designated child support enforcement agency to which he transfers.

As specific examples, your opinion request mentions, "a 35-hour work week, paid lunch hours, holidays, personal, sick or vacation days, free parking, [and] insurance coverage." You also ask about "bargaining unit or exempt status, hours worked, paid leave or other conditions associated with employment with the former employer." The test, as set forth above, as to whether any of the examples you list are included within the term "benefits" for purposes of uncodified section 23 is whether the employee earned the benefit but did not use or receive compensation for such benefit earned in the abolished bureau, agency, or program from which the employee transferred.

Some of the examples listed in your opinion request squarely fall within the meaning of the term "benefits" as used in uncodified section 23. Personal leave, sick leave, and vacation leave are benefits which, to the extent an employee accrued but did not use such benefits during his employment in the abolished bureau, agency, or program from which he transferred, have been earned and thus are obligations already owed to the employee prior to his transfer to the newly designated child support enforcement agency. The newly designated child support enforcement agency to which the employee transfers must, therefore, credit the transferred employee with such benefit upon his transfer.

You also mention free parking. Under a parking reimbursement scheme, if an employee incurred parking expenses while employed in an abolished bureau, agency, or program and, at the time of transfer, had not yet been reimbursed pursuant to the free parking policy, he remains entitled to receipt of such reimbursement. The policy of providing reimbursement for parking does not, however, become, with respect to such transferred employee, an obligation of the newly designated child support enforcement agency as one of the "benefits earned" by such employee in the abolished bureau, agency, or program from which he transferred. <u>But see</u> note 4, <u>supra</u>. Similarly, if the abolished bureau, agency, or program had made a parking facility available to its employees without charge, such a practice cannot be said to have been a benefit "earned" by any of the employees and is therefore not included within

the term "benefits" for purposes of uncodified section 23.[4] The other examples about which you ask do not appear to be benefits which are earned by a particular employee, in the sense of accruing to the employee's credit and being available for his use upon or after such accrual or for which he is entitled to compensation, as is the case with vacation benefits. The number of hours in an employee's work week, whether lunch hours are paid, the policy with respect to holiday pay, and other similar examples are merely employment policies rather than "benefits earned," as that term is used in uncodified section 23. Similarly, whether or not an employee is a member of a bargaining unit is not a "benefit" for purposes of uncodified section 23, since it is not something which is "earned" by the employee in the same manner as vacation leave.

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

1. Pursuant to Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), section 23 (uncodified), an employee who transfers from an abolished bureau of support, local Title IV-D agency, or program for administration and enforcement of support to a newly designated child support enforcement agency pursuant to uncodified section 23 is entitled to maintain his civil service classification and status upon such transfer for purposes of the civil service scheme set forth in R.C. Chapter 124; the newly designated child support enforcement agency then

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[4] In the recent case of State ex rel. Bassman v. Earhart, 18 Ohio St. 3d 182, 480 N.E.2d 761 (1985), the Supreme Court considered whether a county welfare department's discontinuation of free parking privileges for its employees constituted a reduction in pay for purposes of R.C. 124.03(A), which grants the state personnel board of review jurisdiction to hear appeals from an appointing authority's final decision relative to, among other things, reductions in pay. The court, finding no reduction in pay for purposes of R.C. 124.03(A), stated:

> [W]hile the free parking provided by the welfare department could be characterized in a broad sense as a "fringe benefit," for purposes of appealability to the board of review the parking privileges were, absent a legislative promulgation requiring that they be provided, a gratuity. As such, we conclude that the cessation of a gratuity does not rise to the level of a reduction in pay, position or compensation, and therefore the board properly dismissed appellees' appeal for lack of jurisdiction under R.C. 124.03(A). Moreover, at least one court has similarly concluded that the subject of employee parking privileges does not rise to the level of wages, benefits or other terms and conditions of employment. Cf. Social Services Union v. Bd. of Supervisors (1978), 82 Cal. App. 3d 498, 147 Cal. Rptr. 126.

18 Ohio St. 3d at 185, 480 N.E.2d at 763.

has the same functions, powers, duties, and obligations under R.C. Chapter 124 with respect to such transferred employee's status and classification as did the abolished bureau, agency, or program from which such employee transferred.

2. The term "benefits earned," as used in Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), section 23 (uncodified), refers to a benefit, like vacation leave, earned by an employee, but unused or for which the employee was not compensated, while employed by the abolished bureau, agency, or program from which the employee transferred pursuant to uncodified section 23.

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