

OPINION NO. 1104

Syllabus:

Section 319.19, Revised Code, does not apply to semimonthly payments of compensation to employees in the office of a county engineer, employed pursuant to Section 325.17, Revised Code, and the approval of such payments by the board of county commissioners is not required.

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To: Robert E. Dunlap, Logan County Pros. Atty., Bellefontaine, Ohio
By: William B. Saxbe, Attorney General, June 4, 1964

I have before me your request for my opinion whether Section 319.19, Revised Code, applies to the payment of hourly wages to employees of a county engineer. Specifically you ask if individual payroll records of employees employed pursuant to Section 325.17, Revised Code, must be approved by the board of county commissioners prior to payment -- with a resultant ten day waiting period as required by Section 319.19, Revised Code. Your letter of request further suggests that Sections 319.19 and 325.17, Revised Code, are in conflict.

While your question is directed to hourly paid employees, Section 325.17, Revised Code, is applicable to both hourly paid employees and those on a salary, and the conclusion expressed herein will apply to both.

Section 319.19, Revised Code, provides:

"A bill or voucher for payment of money from any fund controlled by the board of county commissioners must be filed with the county auditor and entered in a book for that purpose at least five days before its approval for payment by the board. When approved, the date of approval shall be entered on such book opposite the claim, and payment of such claim shall not be made until after the expiration of five days after the approval has been so entered."

Section 325.17, Revised Code, relates to compensation of deputies, assistants, clerks, and employees of county officials, and provides in part:

"The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, book-keepers, 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 semimonthly from the county treasury, upon the warrant of the auditor."

The county engineer is one of the officers mentioned in Section 325.27, Revised Code, as referred to in Section 325.17, supra.

Several cases and opinions of my predecessors have construed Section 325.17, Revised Code (Section 2981, General Code), in the manner clearly stated in the second paragraph of the syllabus in Opinion No. 3429, Opinions of the Attorney General for 1926, page 253:

"The county commissioners have no authority to fix the compensation of deputies, assistants, clerks and other employees of the officers mentioned in section 2978 (now section 325.27, Revised Code), except that they may limit the aggregate amount which may be expended for such purpose."

At the outset, I find reason to question the applicability of the waiting period provided by Section 319.19, supra, to the specific situation with which your request is concerned. You will note that Section 319.16, Revised Code, provides:

"Except as to moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal so authorized by law."

Section 325.18, Revised Code provides:

"Before the county auditor issues a warrant upon the county treasurer to any deputy, assistant, clerk, bookkeeper or other employee provided for under section 325.17 of the Revised Code, for his compensation, such person shall sign a receipt which shall be in the following form: No....., 19....

"Received of the (here recite the county or officer, as the case may be) by (here insert the name of the party receiving compensation).....dollars, in full for

services as (here insert services) for
.ending.
19.

"I hereby certify that I have rendered the services as herein stated, and that I have received the full sum set forth in the above receipt for my own use and benefit, and that I have not paid, deposited, or assigned or contracted to pay, deposit, or assign, any part of such compensation for the use of any other person, or in any way, directly or indirectly, paid, given, or contracted to pay or give, any reward or compensation for such position or the emoluments thereof.....
(Name of the party receiving money) Such receipts shall be preserved and filed by the auditor."

The provisions of Section 319.16, Revised Code, would appear to be satisfied by the presentation of the receipt specified by Section 325.18, supra, amounting to a "proper order or voucher" for the payment of moneys, in view of the following definition found in Words and Phrases, at Voucher:

"'Voucher' means, when used in connection with disbursement of money, a written or printed instrument in the nature of a bill of particulars, account, receipt, or acquittance that shows on its face the fact, authority, and purpose of disbursement." (Emphasis added.)

Furthermore, the wages of the individual employees in question are fixed and allowed by the county official by whom they are employed, pursuant to Section 317.25, Revised Code, and such wages are a part of the aggregate sum initially approved by the board of county commissioners as the total annual payroll in that office. Such wages are therefore allowed by an officer authorized by law, and the exception stated in the last sentence of Section 319.16, supra, excusing the approval of the board of county commissioners otherwise required, applies.

The above reasoning leads to the conclusion that, other than initial approval of the aggregate annual payroll, the approval by the board of county commissioners of the payroll for each pay period is not required before the county auditor issues the warrants contemplated by Sections 325.17 and 325.18, Revised Code.

Therefore, since approval of payroll vouchers for each pay period is not required, the waiting period provided by Section 319.19, Revised Code, in connection with such approval is not applicable. Sections 325.17 and 325.18, supra, clearly govern the payment of the county employees with whom we are here concerned.

This conclusion is further strengthened by a comparison of Chapters 319 and 325, Revised Code. Chapter 319, Revised Code, relates generally to the powers and duties of the county

auditor, and Section 319.19, as has been previously stated, relates to the filing of bills or vouchers by the county auditor with a record of their approval by the board of county commissioners. What is now Section 319.19, Revised Code, was enacted in substantially its present form by the Seventy-Sixth General Assembly in February, 1904 (97 Ohio Laws 25).

Chapter 325, Revised Code, on the other hand, relates to compensation in county offices, and Sections 325.17 and 325.18, Revised Code, therein relate specifically to the appointment and compensation of employees of county officials, and the issuance of warrants for the same by the county auditor. Sections 325.17 and 325.18, Revised Code, were enacted by the Seventy-Seventh General Assembly in March, 1906 (98 Ohio Laws 90, 92), two years after the enactment of Section 319.19, supra.

When the substantive provisions of the foregoing sections are compared, it seems apparent that Section 319.19, Revised Code, is a general law relating to the duties of the county auditor in regard to bills and vouchers in general, while Sections 325.17 and 325.18, Revised Code, are specific statutes relating to the compensation of employees of county officials and the payment thereof by the county auditor. On that basis, taken together with the chronology of their enactment already noted above, I conclude that the provisions of Sections 325.17 and 325.18, Revised Code, are controlling, and operate as an exception to the application of Section 319.19, Revised Code, to the extent of any conflict in their provisions relative to the compensation of county employees. The applicable principle is stated at 50 Ohio Jurisprudence 2d 82, Statutes, Section 102:

"As a general rule a special law repeals an earlier general law to the extent of any irreconcilable conflict between their provisions, or, speaking more accurately, it operates to engraft on the general statute an exception to the extent of the conflict. In other words, where the general provisions of a statute are found to be in conflict with the express provisions of a later act relating to a particular subject, the latter will govern, although the words of the earlier general act standing alone would be broad enough to include the subject to which the more particular provisions relate."

Accordingly, it is my opinion and you are hereby advised that Section 319.19, Revised Code, does not apply to semi-monthly payments of compensation to employees in the office of a county engineer, employed pursuant to Section 325.17, Revised Code, and the approval of such payments by the board of county commissioners is not required.