

**OPINION NO. 78-057****Syllabus:**

1. A policy for the payment of accumulated, unused sick leave, adopted by a political subdivision pursuant to R.C. 124.39(C), need not be uniform as to all offices, agencies and departments found within such political subdivision.
2. The board of county commissioners is responsible for promulgating a policy for the payment of accumulated, unused sick leave to county employees upon retirement pursuant to R.C. 124.39(C).
3. The board of township trustees is responsible for promulgating a policy for the payment of accumulated, unused sick leave to township employees upon retirement pursuant to R.C. 124.39(C).
4. The legislative authority of a municipal corporation is responsible for promulgating a policy for the payment of accumulated, unused sick leave to municipal employees upon retirement pursuant to R.C. 124.39(C).
5. The board of education is responsible for promulgating a policy for the payment of accumulated, unused sick leave for eligible employees of a school district upon retirement pursuant to R.C. 124.39(C).

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, October 4, 1978**

I have before me your request for my opinion, in which the following questions are asked:

1. Does section 124.39(C), O.R.C., by its reference to "political subdivision", rather than "appointing authority", require a uniform policy as to the payment of sick leave credit upon retirement for all offices, agencies and departments within the subdivision?

2. What authority is responsible for the adoption of any such modification of statutory policy by a:
  - a. county;
  - b. township;
  - c. municipal corporation;
  - d. school district?

As you note in your letter, Am. Sub. H.B. No. 179, enacted by the 112th General Assembly repeals R.C. 124.391 and replaces it with R.C. 124.39(B) and (C). The act, effective September 25, 1978 makes two significant changes in the payment of accumulated, unused sick leave to public employees paid other than by warrant of the Auditor of State. First, a policy for such payment must now be promulgated by a political subdivision, rather than by an appointing authority. Second, a political subdivision may not adopt a policy for the payment of accumulated, unused sick leave which gives its employees fewer benefits than granted to state employees pursuant to R.C. 124.39(A) or that requires greater qualifying service than required of state employees.

Your initial question concerns whether a payment policy established by a political subdivision pursuant to R.C. 124.39(C) must be applied uniformly to all offices, agencies and departments contained within that subdivision. R.C. 124.39(C) provides as follows:

A political subdivision may adopt a policy allowing an employee to receive payment for more than one-fourth the value of his unused sick leave or for more than the aggregate value of thirty days of his 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.

The express language of R.C. 124.39(C) does not require that a policy be applied uniformly with respect to all offices, agencies and departments contained within a political subdivision. Neither is there anything implicit in the word "policy" which mandates such a uniform application. Because "policy" is not defined in R.C. Chapter 124, it must be ". . . read in the context and construed according to the rules of grammar and common usage." R.C. 1.42. "Policy" is defined in Webster's Third New International Dictionary (1961) as follows:

. . . a definite course or method of action selected (as by a government, institution, group or individual) from among alternatives and in light of given conditions to guide and usually determine present or future decisions.

Accordingly, because of the absence of language in R.C. 124.39 either expressly or impliedly requiring a political subdivision to promulgate a uniform policy for the payment of accumulated, unused sick leave uniformly as to all offices, agencies and departments contained therein, I conclude that such policy need not be uniform. However, if such distinctions are drawn, they must be reasonable in order to comport with the guarantees of equal protection found in Art. I, §2, Ohio Const. and the Fourteenth Amendment of the United States Constitution. See, e.g. State, ex rel. City of Garfield Heights v. Nadratowski, 46 Ohio St. 2d 441 (1976); Kinney v. Kaiser Aluminum & Chemical Corp., 41 Ohio St. 2d 120 (1975).

Your second inquiry concerns who may act on behalf of a political subdivision to promulgate or modify a policy pursuant to R.C. 124.39(C). A political subdivision

acts through natural persons designated by statute. In the case of a county, its board of county commissioners is vested with the authority to do whatever the county, as a quasi-corporate entity, might do if capable of rational action, except in respect to matters the cognizance of which is vested in some other officer or person. Shanklin v. Board, 21 Ohio St. 575, 583 (1871); 1973 Op. Att'y Gen. No. 73-066. Therefore, it is my opinion that the board of county commissioners is responsible for promulgating a policy for the payment of accumulated, unused sick leave to county employees upon retirement pursuant to R.C. 124.39(C).

Payment for accumulated sick leave upon retirement is compensation. State, ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 391. A county auditor, treasurer, sheriff, engineer, recorder, probate judge and clerk of the court of common pleas may fix the compensation of their employees, under R.C. 325.17 and R.C. 325.27. While it might be argued that, pursuant to such authority, those officials may determine the amount of accumulated sick leave to be paid upon retirement to their employees, the better view is that such officers lack the authority to promulgate a sick leave payment policy. R.C. 1.51 codifies the common law rule that specific statutes prevail over general ones, unless the General Assembly has clearly manifested a different intention. In the instant situation, the General Assembly, in enacting R.C. 124.39(C), limited the authority to promulgate a policy concerning the payment of accumulated sick leave upon retirement to a political subdivision. The county offices mentioned in R.C. 325.17 and R.C. 325.27 are not political subdivisions. Therefore, it cannot be said that they have the power to promulgate a policy pursuant to R.C. 124.39(C).

Similarly, a board of township trustees is the governing body of a township, responsible for conducting its business. Harding v. Trustees of New Haven Twp., 3 O. 227 (1827); 1963 Op. Att'y Gen. No. 572. Therefore, the board of township trustees is responsible for promulgating a policy for the payment of accumulated, unused sick leave to township employees, pursuant to R.C. 124.39(C).

The legislative authority of a municipal corporation is permitted by R.C. 715.03 to exercise and enforce the powers of a municipality. Accordingly, the legislative authority of a municipal corporation is responsible for promulgating a policy for the payment of accumulated, unused sick leave to municipal employees, pursuant to R.C. 124.39(C).

In part (d) of your last question, you ask who is responsible for the promulgation of a sick leave payment policy for a school district. R.C. 3313.17 states that the board of education of a school district is a body corporate and politic, capable of contracting, holding property, and suing or being sued, in its own name. Further, a board of education is vested, pursuant to R.C. 3313.47, with the authority to manage and control the public schools found in its district. Accordingly, it is my opinion that the board of education is responsible for promulgating a policy for the payment of accumulated, unused sick leave for the eligible employees of a school district, pursuant to R.C. 124.39(C).

Therefore, it is my opinion, and you are so advised, that:

1. A policy for the payment of accumulated, unused sick leave, adopted by a political subdivision pursuant to R.C. 124.39(C), need not be uniform as to all offices, agencies and departments found within such political subdivision.
2. The board of county commissioners is responsible for promulgating a policy for the payment of accumulated, unused sick leave to county employees upon retirement pursuant to R.C. 124.39(C).
3. The board of township trustees is responsible for promulgating a policy for the payment of accumulated, unused sick leave to township employees

upon retirement pursuant to R.C. 124.39(C).

4. The legislative authority of a municipal corporation is responsible for promulgating a policy for the payment of accumulated, unused sick leave to municipal employees upon retirement pursuant to R.C. 124.39(C).
5. The board of education is responsible for promulgating a policy for the payment of accumulated, unused sick leave for eligible employees of a school district upon retirement pursuant to R.C. 124.39(C).