

March 31, 2015

The Honorable Donald R. Burns, Jr.
Carroll County Prosecuting Attorney
7 East Main Street
Carrollton, Ohio 44615

SYLLABUS:

2015-011

1. A board of county commissioners may pay overtime compensation to a county director of economic development if the overtime payment is part of the compensation fixed by the board under R.C. 307.07(A) and conforms with local policies governing overtime compensation. The board of county commissioners shall determine whether the director of economic development is exempt from the overtime provisions of the federal Fair Labor Standards Act and thus ineligible for overtime compensation pursuant to the county's overtime policy.
2. A county director of economic development may not be compensated for his service as a member of the board of trustees of a regional airport authority when the resolution creating the regional airport authority provides that board members are not to be compensated.
3. A county auditor may require written verification of time worked before issuing a warrant on the county treasurer for the payment of overtime compensation to a county employee. (2003 Op. Att'y Gen. No. 2003-029, syllabus paragraphs 1 and 3, approved and followed.)



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March 31, 2015

OPINION NO. 2015-011

The Honorable Donald R. Burns, Jr.
Carroll County Prosecuting Attorney
7 East Main Street
Carrollton, Ohio 44615

Dear Prosecutor Burns:

You have requested an opinion concerning the payment of overtime compensation to a county director of economic development and the authority of a county auditor to require written verification of hours worked prior to issuing a warrant on a county treasurer for payment of overtime compensation. The Carroll County Board of Commissioners has submitted to the Carroll County Auditor a request for the auditor to issue a warrant on the Carroll County Treasurer for payment of overtime compensation to the Carroll County Director of Economic Development. The auditor has not issued the warrant, citing a lack of verifying documentation and uncertainty regarding the propriety of the requested payment. Based on these circumstances, you ask several questions, which we have restated and reordered as follows:

1. Whether a director of economic development hired by a board of county commissioners and paid an annual salary pursuant to R.C. 307.07(A) may be paid overtime.
2. Whether a director of economic development may receive compensation for his service as a member of the board of trustees of a regional airport authority.
3. Whether a county auditor may require written verification of time worked before issuing a warrant for the payment of overtime compensation to a county employee.

Payment of Overtime Compensation to a County Director of Economic Development

It is firmly established that a board of county commissioners, as a creature of statute, has only those powers that are expressly granted by statute or that are necessarily implied therein. 2009 Op. Att’y Gen. No. 2009-040, at 2-296 (“[i]t is well established that a board of county commissioners is a creature of statute that may exercise only those powers conferred upon it expressly by statute or as may be implied by necessity in order to facilitate the exercise of another express power” (citing *State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947))); see *Elder v. Smith*, 103 Ohio St. 369, 370, 133 N.E. 791 (1921) (a “board of county commissioners has such powers and

jurisdiction, and only such, as are conferred by statute”). Therefore, if a board of county commissioners is not granted a particular power expressly by statute or necessarily by implication, it is precluded from exercising that power.

For the purpose of developing and promoting “plans and programs designed to assure that county resources are efficiently used, economic growth is properly balanced, and that county economic development is coordinated with that of the state and other local governments,” a board of county commissioners may create an office of economic development. R.C. 307.07(A). If a board of county commissioners creates an office of economic development, it may hire a director of economic development, “who shall be a member of the unclassified civil service.”¹ *Id.* The board of county commissioners is authorized to fix the compensation of a director of economic development.² *Id.* A director of economic development may, with the approval of the board of county commissioners, hire staff, contract for services, enter into agreements with public and private entities, and make loans and grants. *See* R.C. 307.07(B) (enumerating these and other functions and duties of a director of economic development).

Ohio law, like federal law, requires employees to be paid overtime compensation for hours worked in excess of forty hours per week, with certain types of employees being exempt from this requirement. *See White v. Murtis M. Taylor Multi-Serv. Ctr.*, 188 Ohio App. 3d 409, 2010-Ohio-2602, 935 N.E.2d 873, at ¶11 (Cuyahoga County 2010) (citing the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, and the Ohio Minimum Fair Wage Standards Act, R.C. 4111.01 *et seq.*). Specifically, R.C. 4111.03(A) provides that “[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s wage rate for hours worked in excess of forty hours in one workweek” in a manner consistent with the federal Fair Labor Standards Act, 29 U.S.C.A. § 207, 213 (West 2015) (“FLSA”). For purposes of paying overtime, the term “employer” includes “the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities.” R.C. 4111.03(D)(2). Thus, a county, as a political subdivision of the state of Ohio, qualifies as an “employer” for purposes of R.C. 4111.03.

¹ Employees in the service of a county are included within the civil service system set forth in R.C. Chapter 124 and divided into two categories: classified employees and unclassified employees. R.C. 124.01(A) (“[c]ivil service’ includes all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state”); R.C. 124.11 (setting forth composition of the classified service and the unclassified service, including identifying a director of economic development hired pursuant to R.C. 307.07 as being in the unclassified service); *see* 1991 Op. Att’y Gen. No. 91-011, at 2-58 (discussing distinctions between the classified service and the unclassified service).

² In lieu of hiring a director of economic development, a board of county commissioners may enter into an agreement with a county planning commission within the county, a regional planning commission, the Ohio State University extension, or a public or private nonprofit organization, “to carry out all of the functions and duties of a director of economic development” set forth in R.C. 307.07(B). R.C. 307.07(A)(1)-(3).

R.C. 4111.03 makes special provisions for payment of compensatory time and the option to establish a “different policy” for the payment of overtime for county employees. Specifically, R.C. 4111.03(B) and (C) provide:

(B) If a county employee elects to take compensatory time off in lieu of overtime pay, for any overtime worked, compensatory time may be granted by the employee’s administrative superior, on a time and one-half basis, at a time mutually convenient to the employee and the administrative superior within one hundred eighty days after the overtime is worked.

(C) A county appointing authority with the exception of the county department of job and family services may, by rule or resolution as is appropriate, indicate the authority’s intention not to be bound by division (B) of this section, and to adopt a different policy for the calculation and payment of overtime than that established by that division. Upon adoption, the alternative overtime policy prevails. Prior to the adoption of an alternative overtime policy, a county appointing authority with the exception of the county department of job and family services shall give a written notice of the alternative policy to each employee at least ten days prior to its effective date.

With regard to the option to take compensatory time under division (B), it is the employee’s option to elect to take compensatory time “in lieu of overtime pay.” Thus, if a county employee is otherwise entitled to “overtime pay,” he may elect to take compensatory time provided that the employee’s request is “granted by the employee’s administrative superior.” Division (C) permits a county appointing authority to create its own overtime policy, the terms of which differ from the requirements in R.C. 4111.03(B). Based upon the materials that your office has provided, it appears that the board of county commissioners in your county has adopted such a policy. Accordingly, the calculation and payment of overtime for county employees is controlled by that policy.³

While R.C. 4111.03 includes county employees among those entitled to receive overtime compensation, R.C. 4111.03(D)(3) contains numerous exclusions, including an exclusion for “[a]ny individual ... employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the ‘Fair Labor Standards Act of 1938.’” R.C. 4111.03(D)(3)(d). The specific federal statute that creates the exemption, 29 U.S.C.A. § 213, is the source of language mimicked by R.C. 4111.03(D)(3)(d). The federal statute provides no guidance beyond its plain language as to the meaning of the term “bona fide executive, administrative, or professional capacity.” The United States Secretary of Labor, however, has promulgated rules that shed some light on the meaning of the

³ The employee you have asked about is not subject to a collective bargaining agreement, and this opinion does not consider the terms of any collective bargaining agreement. A collective bargaining agreement entered into pursuant to R.C. Chapter 4117 will “govern[] the wages, hours, and terms and conditions of public employment covered by the agreement.” R.C. 4117.10(A). Accordingly, the advice in this opinion does not apply to county employees whose positions are covered by a collective bargaining agreement.

term. Title 29 C.F.R. § 541.100 defines “employee employed in a bona fide executive capacity” as follows:

- (1) Compensated on a salary basis at a rate of not less than \$455 per week...[;]
- (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more other employees; and
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

These criteria have been adopted and followed by federal courts in applying this exemption from the overtime compensation provisions of the FLSA. *Thomas v. Speedway SuperAmerica, LLC*, 506 F.3d 496, 502 n.3 (6th Cir. 2007).

For purposes of comparison to the above criteria, we turn to the powers and duties of a county director of economic development as they are set forth in R.C. 307.07(B):⁴

- (B) The director of economic development may:
 - (1) With the approval of the board [of county commissioners], hire such staff and employ such technical and advisory personnel as the director sees fit to enable the director to carry out the functions and duties of the office;
 - (2) With the approval of the board, contract for services necessary to enable the director to carry out the functions and duties of the office;
 - (3) With the approval of the board, enter into agreements with federal, state, and local governments and agencies thereof, and with public, private, or nonprofit organizations to carry out the functions and duties of the office;
 - (4) Maintain membership in development organizations;

⁴ “A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee’s salary and duties meet the requirements of the regulations in this part.” 29 C.F.R. § 541.2. Ordinarily, this principle requires an analysis of the duties actually performed by an employee to determine exempt status under the overtime provisions of the Fair Labor Standards Act and R.C. Chapter 4111. *See* 1980 Op. Att’y Gen. No. 80-061, at 2-246 to 2-247 (noting that whether an exemption from overtime requirements applies “depends upon the facts surrounding that employee’s position”). However, the functions and duties of a county director of economic development are prescribed by R.C. 307.07(B).

(5) With the approval of the board, make loans or grants and provide other forms of financial assistance for the purpose of economic development, including financial assistance for permanent public improvements, in compliance with applicable laws of this state, and fix the rate of interest and charges to be made for such financial assistance;

(6) With the approval of the board, receive and accept grants, gifts, and contributions of money, property, labor, and other things of value, to be held, used, and applied only for the purpose for which they are made, from individuals, private and public corporations, the United States government or any agency thereof, from the state or any agency thereof, or from any political subdivision or any agency thereof, and may agree to repay any contribution of money or return any property contributed or the value thereof in amounts, and on terms and conditions, excluding the payment of interest, as the director determines, and may evidence the obligations by written evidence;

(7) Establish with the board any funds that are necessary for the deposit and disbursement of gifts or contributions of money accepted for economic development purposes;

(8) With the approval of the board, design, implement, monitor, oversee, and evaluate economic development plans, programs, strategies, and policies;

(9) Purchase real property to convey to a county land reutilization corporation to be used in accordance with its public purposes;

(10) Perform all acts necessary to fulfill the functions and duties of the office.

Comparing these duties to the definition set forth in 29 C.F.R. § 541.100, it is apparent that a county director of economic development is called upon to hire appropriate staff, enter into agreements with other governmental and private entities to carry out the “functions and duties of the office,” make loans and grants for the purpose of “economic development, including financial assistance for permanent public improvements,” accept funds for the operations of the department, establish funds for the deposit and distribution of grants and contributions, design and implement economic development plans, purchase real estate to be used by the agency, and “[p]erform all acts necessary to fulfill the functions and duties of the office.” Taken as a whole, these duties comprise the “management of the enterprise in which the [director] is employed.” *See* 29 C.F.R. § 541.100(a)(2). With the approval of the board of county commissioners, a director of economic development may hire staff “as the director sees fit to enable the director to carry out the functions and duties of the office.” R.C. 307.07(B)(1). Thus, a director of economic development may direct staff to assist him in carrying out the functions and duties of the office; the director also is specifically authorized to “hire or fire other employees.” *See* 29 C.F.R. § 541.100(a)(4). These are executive functions and are the types of functions that bring the director within the overtime compensation exemption in R.C. 4111.03(D)(3)(d). Accordingly, for the purpose of our analysis, we are of the opinion that a county director of economic development is exempt from the overtime requirements of the federal Fair Labor

Standards Act, 29 U.S.C. § 201 *et seq.*, and the Ohio Minimum Fair Wage Standards Act, R.C. 4111.01 *et seq.* This means that a county is not required to pay overtime compensation to a county director of economic development pursuant to the federal and state fair wage laws.⁵

R.C. 307.07(A) authorizes a board of county commissioners to “fix the [director of economic development’s] compensation.” And “[i]ncluded in the power to fix compensation is the ability to establish rates for overtime and compensatory time off for employees.” 1980 Op. Att’y Gen. No. 80-061, at 2-248. It is possible that in “fixing” the compensation of the director pursuant to the express authority of R.C. 307.07(A), the board of county commissioners agreed to compensate the director for overtime. If so, and if such compensation was part of the agreed-upon compensation package when the director was appointed, the director is entitled to that compensation by virtue of R.C. 307.07(A). Absent such an express agreement, the director’s compensation is subject to the overtime exemption for executive, administrative, and professional employees in R.C. 4111.03(D)(3)(d).

Furthermore, the director of economic development, as a county employee, appears to be subject to the overtime policy adopted by the board of county commissioners. That policy provides that “[e]mployees exempt from the overtime provisions of the FLSA are not eligible for overtime payment. The appropriate appointing authority shall determine if an employee is exempt from overtime requirements for purposes of the FLSA.” CORSA Personnel Policy Manual, 2012 Best Practices, section XI.A., p. 17. Thus, a board of county commissioners may pay overtime compensation to a county director of economic development if the overtime payment is part of the compensation fixed by the board under R.C. 307.07(A) and conforms with local policies governing overtime compensation. It is the responsibility of the appointing authority—in this case, the board of county commissioners—to determine whether the director of economic development is exempt from the overtime provisions of the FLSA and thus ineligible for overtime compensation pursuant to the county’s overtime policy. *See* CORSA Personnel Policy Manual, 2012 Best Practices, section XI.A., p. 17; *see also* note 5, *supra*.

A County Director of Economic Development May Not Be Compensated for Service as a Member of the Board of Trustees of a Regional Airport Authority When the Resolution Creating the Authority Provides that Board Members are not to be Compensated

We now turn to your second question, whether a director of economic development may receive compensation for his service as a member of the board of trustees of a regional airport authority. The creation of a regional airport authority is authorized by R.C. 308.02. R.C. 308.03

⁵ “Whether employees are exempt from the requirements of the Act is primarily a question of fact.” *Hodgson v. Klages Coal & Ice Co.*, 435 F.2d 377, 382 (6th Cir. 1970). Generally, exemptions from the FLSA “are to be narrowly construed against the employers seeking to assert them and their application limited to those establishments plainly and unmistakably within their terms and spirit.” *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960). In that regard, “the employer has the burden of proving that it is within the terms and spirit of the exemption which it claims.” *Brennan v. Southern Productions, Inc.*, 513 F.2d 740, 744 (6th Cir. 1975).

provides that the board of county commissioners of a single county, or two or more contiguous counties, may adopt a resolution creating such an authority “for the purpose of acquiring, constructing, operating, and maintaining airports and airport facilities.” R.C. 308.02; R.C. 308.03. The resolution also must set forth the “number, term, compensation if any, and manner of selecting the members of the board of trustees of the regional airport authority.” R.C. 308.03(E). Within 60 days after a regional airport authority is created pursuant to R.C. 308.03, the board of trustees for the regional airport authority must be appointed in accordance with the resolution creating it. R.C. 308.04. All the power and authority granted to a regional airport authority is vested in and exercised by its board of trustees. R.C. 308.05; *see* R.C. 308.06 (setting forth the powers of a regional airport authority).

Based upon information that you have provided, it is our understanding that, pursuant to the express terms of the resolution creating the airport authority, members of its board are not compensated for their service. The economic development director of your county was selected to serve as a member of that board.⁶ You have asked whether potential overtime compensation claimed by the director may include time that he spent performing the duties of a member of the board of trustees of the regional airport authority.⁷

Your question centers on the compensation of this person for overtime in his capacity as economic director that may have consisted of time spent serving as a trustee of the airport authority. Ohio courts have applied the principle that a public official may only receive as compensation the salary or payment fixed by law, and no more. “Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty any other or further remuneration or reward than that prescribed and allowed by law.” *Somerset Bank v. Edmund*, 76 Ohio St. 396, 81 N.E. 641 (1907) (syllabus, paragraph one). *See, e.g., Teale v. Stillinger*, 95 Ohio St. 129, 115 N.E. 1010 (1916) (a county treasurer may not receive additional compensation beyond that which is fixed by law to perform the duties of his office). This time honored principle is also embodied in R.C. 2921.43(A)(1), which declares that “[n]o public servant shall knowingly solicit or accept ... [a]ny compensation, other than as allowed [by law] ... to perform the public servant’s official duties[.]” Here, a person serves in two separate and distinct public positions, one of which is expressly uncompensated. While one person may hold simultaneously two separate public positions, it is imperative that he scrupulously identify the source of compensation for time spent performing the separate duties of each position. Thus, it is incumbent upon the holder of the two positions to make certain that proper leave time from one position is secured in order to spend time in the

⁶ You have informed us that the Carroll County director of economic development has since resigned his position as a member of the board of trustees of the regional airport authority.

⁷ You have not asked, and this opinion therefore does not address, whether the positions of county director of economic development and member of the board of trustees of a regional airport authority are compatible.

performance of the duties of the other position. In this case, the person must ensure that proper leave time is secured from his position as director of economic development when he performs his duties as an uncompensated member of the board of trustees of the regional airport authority. Thus, in answer to your specific question, the person who holds the position of director of economic development may not receive compensation in that position, whether overtime compensation or otherwise, for time that was spent serving as an uncompensated member of the board of trustees of a regional airport authority.

County Auditor's Authority to Require Written Verification Before Issuing Warrant

Your final question concerns the scope of the county auditor's authority to require verification for the payment of expenses submitted by the board of county commissioners. A county auditor is a creature of statute and may "exercise only such powers as are expressly delegated by statute, together with such implied powers as are necessary to carry into effect the powers expressly delegated." *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112 (1935). "[T]he powers of a county auditor are fixed by statute, and the auditor 'may not exceed the authority granted that office by the General Assembly.'" 2012 Op. Att'y Gen. No. 2012-035, at 2-311 (quoting 1984 Op. Att'y Gen. No. 84-005, at 2-15).

The General Assembly has created a system under which the county auditor is required to approve the proposed expenditure of public monies by the board of county commissioners through the issuance of a warrant that the treasurer, in turn, redeems with the payment of cash from the county treasury. Under R.C. 321.15, "[n]o money shall be paid from the county treasury ... except on the warrant of the county auditor." Once a warrant has been issued by the county auditor, "the treasurer shall redeem it by payment of cash or by check on the depository." R.C. 321.16(A).

The process establishing the issuance of a warrant by the county auditor is set forth in R.C. 319.16. That section provides:

The county auditor shall issue warrants, including electronic warrants authorizing direct deposit for payment of county obligations in accordance with [R.C. 9.37(F)], on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter 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, including a county board of mental health or county board of developmental disabilities, so authorized by law. If the auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the board, officer, or tribunal who presented the voucher. If the board, officer, or tribunal determines that the expenditure is valid and the auditor continues to refuse to

issue the appropriate warrant on the county treasury, a writ of mandamus may be sought. The court shall issue a writ of mandamus for issuance of the warrant if the court determines that the claim is valid.

Evidentiary matter includes original invoices, receipts, bills and checks, and legible copies of contracts.

The question of what constitutes acceptable “evidentiary matter” to support the issuance of a warrant lies within the reasonable discretion of the county auditor. 2009 Op. Att’y Gen. No. 2009-033; 2003 Op. Att’y Gen. No. 2003-029, (syllabus, paragraph three) (“[i]t is within the authority of the county auditor to determine what constitutes sufficient ‘evidentiary matter’ for purposes of R.C. 319.16, and to require that requests for reimbursement of travel expenses be accompanied by itemized receipts”). The county auditor is not simply to serve as a rubber stamp for all requests from the board of county commissioners. *See generally* 2009 Op. Att’y Gen. No. 2009-033, at 2-218 (a county auditor “does not act as a mere machine, without consciousness, duty, or responsibility, only to place his signature to warrants which will cause public moneys to leave the public treasury; he is not a mere automaton, there for the purpose of writing his signature to warrants on the public treasury when the button is touched” (citing *Kloeb v. Mercer Cnty. Comm’rs*, 4 Ohio C.C. (n.s.) 565, 569 (App. Mercer County 1903))). In fact, the county auditor may be held personally liable for failing to “exercise her statutory duties under R.C. 319.16 by acting reasonably and prudently in issuing a warrant in payment of an expenditure that violates an existing constitutional, statutory, or administrative provision.” 2009 Op. Att’y Gen. No. 2009-033 (syllabus, paragraph five). If the county auditor declines a request to issue a warrant submitted by a board of county commissioners, he is required to notify the board of his refusal to issue a warrant. R.C. 319.16. In that situation, he may be compelled to make that payment through an action in mandamus brought by the board of county commissioners. *Id.*

The Attorney General examined the scope of the county auditor’s authority under R.C. 319.16 in 2003 Op. Att’y Gen. No. 2003-029. The issue in that instance involved the proper documentation for travel expenses incurred by county employees. The Attorney General advised that the auditor could evaluate the documentation to determine whether or not the expenses submitted complied with the travel policy of the board of county commissioners. “[T]he county auditor is authorized to question the validity of claims for payment from the county treasury and may refuse payment of unlawful claims, including expenditures authorized by a public body in excess of ‘the legal bounds of [its] discretion.’” 2003 Op. Att’y Gen. No. 2003-029, at 2-248 to 2-249 (citing 1961 Op. Att’y Gen. No. 1999, p. 28, at 30).

In this matter, the Carroll County Auditor questions whether the director of economic development has provided adequate documentation of time spent in the performance of his official duties to support payment to him of overtime compensation by the board of county commissioners. If the director of economic development is exempt from overtime compensation by virtue of R.C. 4111.03(D)(3)(d), and if the director’s compensation, as fixed by the board of county commissioners under R.C. 307.07(A), does not otherwise include the payment of overtime compensation, then the director is not eligible for overtime compensation, and the auditor should not issue a warrant for payment of overtime compensation to the director. If the director of economic development is eligible for overtime compensation, he is subject to the county’s overtime compensation policy, and the

auditor is required to determine whether the director is in compliance with that policy in his accumulation of and request for overtime compensation.⁸

“[T]o fully and properly perform her duty to determine whether a warrant should be issued for expenses presented to her for payment, an auditor must have access to documentation that will enable her to ascertain the propriety of those expenses.” 2003 Op. Att’y Gen. No. 2003-029, at 2-246. The “evidentiary matter” requirement of R.C. 319.16 enables a county auditor to determine the propriety of an expenditure. 2009 Op. Att’y Gen. No. 2009-033, at 2-219 (citing R.C. 319.16); *see State ex rel. Krabach v. Ferguson*, 46 Ohio St. 2d 168, 173, 346 N.E.2d 681(1976) (noting that the auditor may “require factual proof which is appropriate to demonstrate with a high degree of certainty that each claim is legal and that all requirements of law have been complied with”). The Revised Code defines “evidentiary matter” to include “original invoices, receipts, bills and checks, and legible copies of contracts.” R.C. 319.16. Ultimately, however, “[i]t is within the authority of the county auditor to determine what constitutes sufficient ‘evidentiary matter’ for purposes of R.C. 319.16.” 2003 Op. Att’y Gen. No. 2003-029 (syllabus, paragraph 3). This authority is “necessarily implied from the auditor’s statutory duty to issue warrants upon proper claims.” *Id.* at 2-246. That is, “the authority to establish what is sufficient ‘evidentiary material’ must lie with the county auditor since it determines the extent to which she can fully perform her statutory duty, and is an integral part of the ‘cumulative safeguards’ established by the General Assembly to protect the public treasury.” *Id.*⁹ Thus, an auditor may properly require that evidentiary material be sufficiently detailed to enable him to confirm that the request has a basis in fact.

⁸ For purposes of examining a county auditor’s authority to require written verification of time worked before issuing a warrant for the payment of overtime compensation to a county employee, we assume the employee is eligible for overtime compensation. That determination must be made by the board of county commissioners in accordance with the analysis set forth in response to your first question.

⁹ For example, the county treasury must be protected against the double payment of compensation to one person for the same service. *See* 1984 Op. Att’y Gen. No. 84-070, at 2-228 (noting that “[t]here is no prohibition against one person, who performs the duties of two compatible public positions, receiving the compensation of both positions . . . as long as he does not draw double pay for performing the same service”); 1981 Op. Att’y Gen. No. 81-020, at 2-78 (same); 1980 Op. Att’y Gen. No. 80-073, at 2-292 (same). The materials you provided us indicate that the Carroll County Director of Economic Development also is an employee of the Carroll County Regional Planning Commission. The Carroll County Auditor has expressed the concern that the absence of written verification of hours worked prevents him from determining whether the board of county commissioners is requesting double payment for the same service. Thus, requiring written verification of hours worked serves to prevent improper double payment. *See* 1984 Op. Att’y Gen. No. 84-070, at 2-228 (noting that “a person serving in both positions may be required to document the time spent performing the duties of each position prior to receipt of compensation”).

Accordingly, to verify the propriety of a request for payment of overtime compensation to a county employee, a county auditor may require written verification of time worked before he issues a warrant on the county treasurer for that payment.

Conclusions

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

1. A board of county commissioners may pay overtime compensation to a county director of economic development if the overtime payment is part of the compensation fixed by the board under R.C. 307.07(A) and conforms with local policies governing overtime compensation. The board of county commissioners shall determine whether the director of economic development is exempt from the overtime provisions of the federal Fair Labor Standards Act and thus ineligible for overtime compensation pursuant to the county's overtime policy.
2. A county director of economic development may not be compensated for his service as a member of the board of trustees of a regional airport authority when the resolution creating the regional airport authority provides that board members are not to be compensated.
3. A county auditor may require written verification of time worked before issuing a warrant on the county treasurer for the payment of overtime compensation to a county employee. (2003 Op. Att'y Gen. No. 2003-029, syllabus paragraphs 1 and 3, approved and followed.)

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General