

**OPINION NO. 76-046****Syllabus:**

Pursuant to R.C. 325.17, the county engineer is the appointing authority for employees in his office, and pursuant to R.C. 124.391, he may promulgate policies governing payment for unused sick leave upon the retirement of such employees.

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**To: Thomas A. Unverferth, Putnam County Pros. Atty., Ottawa, Ohio**  
**By: William J. Brown, Attorney General, June 11, 1976**

I have before me your request for my opinion on the following question:

"Under Revised Code Section 124.391, does the County Engineer have the right to determine the policy for payment of sick leave upon retirement of a county employee appointed by him when he has complied with that Statute and his policy disagrees with that set by the County Commissioners."

R.C. 124.38 specifies sick leave provisions for employees whose salary or wage is paid in whole or in part by the state, for employees in the various offices of the county, municipal and civil service township service, and for employees of boards of education for whom sick leave is not provided by R.C. 3319.141. R.C. 124.39 provides for cash payment for sick leave credit for state employees paid directly by warrant of the state auditor.

R.C. 124.391 specifies conversion of sick leave credit for employees covered by R.C. 124.38, but not eligible for benefits under R.C. 124.39 in the following terms:

"All employees covered by section 124.38 of the Revised Code but not eligible for benefits under section 124.39 of the Revised Code, and those covered by section 3319.141 [3319.14.1] of the Revised Code, shall at the time of their retirement receive pay for all or part of their unused sick leave to the extent consistent with the policy of the appointing authority in effect. The appointing authority shall promulgate the adoption or any modification of any such policy by written notice to each employee. The promulgation of a written notice that the appointing authority has determined that employees will receive any part of their unused sick leave constitutes a policy for purposes of this section. An appointing authority may include in its policy a requirement that an employee have a minimum number of years service with the unit in order to be eligible for a payment for unused sick leave. If no such policy is in effect at such time, each employee with ten or more years of service with state or any of its political subdivisions shall receive payment based on the employee's rate of pay at retirement for one-fourth of the employee's accrued but unused sick leave at retirement up to a maximum accrual of one hundred twenty days. If an employee eligible for a payment pursuant to this section does not apply to the authority within one hundred twenty days after receipt of written notice of eligibility for payment or transfer of accumulated sick leave from the appointing authority, the payment shall be made to the employee." (Emphasis added.)

In determining the application of R.C. 124.391 in the situation you describe, the primary consideration must be whether it is the county engineer or the board of county commissioners who is the appointing authority.

The board of county commissioners' has only those powers to

appoint and hire which are statutorily specified. See R.C. 305.13, 305.14, 305.15 and 305.16, and 1957 Op. Att'y Gen. No. 1124. R.C. 325.17 provides for the compensation of county employees as follows:

"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. . . ."  
(Emphasis added.)

R.C. 325.27 lists various county officers, including the county engineer.

I recently had occasion to consider wherein the authority lies to establish a standard work week for county employees. See 1975 Op. Att'y Gen. No. 75-078. I noted in that opinion that the county commissioners are given authority to limit the aggregate amount which may be expended to compensate the various personnel in the county offices. I concluded, however, that pursuant to R.C. 325.17, the authority to appoint, hire, fix compensation and establish a standard work week is vested in the county officers enumerated in R.C. 325.27.

Inasmuch as R.C. 325.27 does specifically list the county engineer, it is my opinion and you are so advised that, pursuant to R.C. 325.17, the county engineer is the appointing authority for employees in his office, and pursuant to R.C. 124.391, he may promulgate policies governing payment for unused sick leave upon the retirement of such employees.