

OPINION NO. 81-021**Syllabus:**

The language of R.C. 325.17 does not prohibit a county auditor from issuing twenty-seven biweekly paychecks when the calendar year includes twenty-seven payperiods as long as the total amount so paid does not exceed the authorized annual compensation.

To: David Tobin, Columbiana County Pros. Atty., Lisbon, Ohio
By: William J. Brown, Attorney General, April 20, 1981

I have before me your request for an opinion concerning whether particular language within R.C. 325.17 prohibits a county auditor from issuing twenty-seven (27) biweekly paychecks to county employees in calendar year 1982. Your letter sets forth the background of your request in the following manner:

This problem arises with salaried employees who are paid on a bi-weekly basis, due to the fact that such persons are paid for a three hundred sixty-four day year (26 pay periods x 14 days per payperiod). Therefore, a salaried employee accumulates one unpaid day for each calendar year worked (two days in a Leap Year). It would appear that these days have accumulated to the point that they are manifesting themselves in the form of a twenty-seventh payday in Calendar year 1982.

My question to your office is, therefore, as follows:

Does the language in Section 325.17 of the Ohio Revised Code, which reads "the amount of bi-weekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such employee would receive if he were paid semi-monthly," prohibit the County Auditor from issuing twenty-seven bi-weekly paychecks, in Calendar year 1982, to the employees as enumerated in that Statute, when the entire amount of compensation received in the first bi-weekly paycheck, and a portion of the compensation received in the second bi-weekly paycheck were for a pay period and for services performed in Calendar year 1981? It is assumed that these funds were budgeted for, and encumbered during, said previous year.

R.C. 325.17 states, in pertinent part:

The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, 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 biweekly from the county treasury, upon the warrant of the auditor. The amount of biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such employee would receive if he were paid semimonthly. (Emphasis added.)

The language gives a county officer broad authority to appoint employees and to fix their compensation, "limited only by the aggregate amount of compensation fixed

by the Board of County Commissioners for the particular office." 1965 Op Att'y Gen. No. 65-222. As my predecessor pointed out in Op. No. 65-222, "[t]here is no statutory requirement that a county officer fix the compensation of his employees by hourly, per diem, weekly or monthly rates." Nevertheless, R.C. 325.17 does mandate that the deputies, assistants, clerks, bookkeepers, or other employees of the officers mentioned in R.C. 325.27 be paid on a biweekly basis.

Prior to 1965, county employees were paid semimonthly from the county treasury. When 1965 Ohio Laws 219 (Am. Sub. H.B. 75, eff. Oct. 30, 1965) became effective, the option was given to a board of county commissioners to pay the county employees either on a semimonthly or biweekly basis. Am. Sub. H.B. 75 also amended R.C. 325.17 to include the sentence: "The amount of biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such employee would receive if he were paid semimonthly." This sentence was apparently intended merely to ensure that an employee would receive the same annual compensation whether paid on a semimonthly basis or on a biweekly basis. Although the protection has been kept intact within R.C. 325.17, subsequent amendments have eliminated the semimonthly payment option. 1969-1970 Ohio Laws 2106 (Am. H.B. 347, eff. Nov. 14, 1969). Whatever the compensation rate is, counties must now pay the employees enumerated in R.C. 325.17 only on a biweekly basis.

It is my understanding that Columbiana County has set the compensation of some employees on a monthly salary rate. The monthly salary is multiplied by twelve to arrive at the annual salary, which is then dispersed over the normal twenty-six payperiods in a calendar year. The peculiar situation of the existence of a twenty-seventh payperiod in a calendar year presents a particular problem to the monthly rate system of compensation. Because R.C. 325.16 prohibits "the payment of compensation in excess of the amount authorized," the county auditor has no choice but to divide the set annual salary by the number of payperiods in the calendar year to arrive at the biweekly payment. For example, if there are twenty-seven payperiods in the calendar year and a person's annual salary is \$12,000 dollars per year based on a \$1,000 dollar-per-month rate, then the auditor must divide \$12,000 dollars by twenty-seven to arrive at the biweekly payment.

Your suggestion that the first paycheck in calendar year 1982 and a portion of the second paycheck be included as compensation for services performed in the previous year does not alleviate the problem. This would, in effect, only create a twenty-seventh payperiod for the previous year and there again the problem would lie.

It is possible under R.C. 325.17 to set the compensation of the employees in question on an hourly, per diem, weekly, or biweekly rate. Compensation according to any one of these rates would avoid the need to decrease biweekly payments that occurs in the unusual circumstance of a twenty-seventh payperiod when salaries are set on a monthly or yearly rate. When arriving at a budget for an upcoming year under an hourly, per diem, weekly, or biweekly rate plan, the county authorities may budget additional amounts for the occurrence of a twenty-seventh payperiod. The sentence in R.C. 325.17 which requires that the total annual payment be equal whether paid biweekly or semimonthly has no real relevance to the problem of a twenty-seventh payperiod.

Therefore, it is my opinion, and you are advised, that the language of R.C. 325.17 does not prohibit a county auditor from issuing twenty-seven biweekly paychecks when the calendar year includes twenty-seven payperiods as long as the total amount so paid does not exceed the authorized annual compensation.