

**Syllabus:**

1. In Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. Sept. 29, 2005), the General Assembly amended R.C. 3375.48 to transfer, from the judges of the common pleas court to the board of trustees of the county law library association (library board), the authority to fix the compensation of the law librarian and assistant librarians. In Am. Sub. H.B. 66 and Sub. H.B. 363, 126th Gen. A. (2006) (eff. Aug. 3, 2006), the General Assembly amended R.C. 3375.49 to divide between the law library association and the county the responsibility for paying the compensation of the law librarian and up to two assistant librarians, with the proportion of the county's share decreasing, and the library association's share proportionally increasing, each calendar year until 2011, when the law library association will begin to pay the entire amount of the librarians' compensation.
2. The authority to fix and pay the compensation of a county law librarian and assistant librarians under R.C. 3375.48 and R.C. 3375.49 includes the authority to fix and pay to the librarians a salary and fringe benefits, such as paid leave, medical insurance, and life insurance. Thus, prior to the enactment of Am. Sub. H.B. 66, the common pleas judges had the authority to grant the county law librarian and assistant librarians a salary and fringe benefits, as the judges deemed proper, and the board of trustees of the county law library association has such authority now.
3. The board of county commissioners and the board of trustees of the county law library association must allocate the costs of the salary and fringe benefits that are fixed by the library board for the county law librarian and up to two assistant librarians in accordance with

the percentages set forth in R.C. 3375.49, as amended by Am. Sub. H.B. 66 and Sub. H.B. 363. The board of county commissioners and library board need not allocate separately each component of a librarian's compensation in accordance with the percentages set forth in Am. Sub. H.B. 66 and Sub. H.B. 363, but may agree to divide the payment of each component of a librarian's compensation package as they wish, so long as the cost of the total compensation package is allocated in accordance with the percentages set forth in Am. Sub. H.B. 66 and Sub. H.B. 363.

4. A county law library association is not an agency or subdivision of county government, and law librarians and assistant law librarians are not county employees who are entitled to receive compensation prescribed by statute for county employees, unless they are specifically included within a particular statutory scheme. (1991 Op. Att'y Gen. No. 91-061 and 1988 Op. Att'y Gen. No. 88-095, overruled.)
5. If the judges of the common pleas court of the county, acting within their discretion under the former version of R.C. 3375.48, provided law librarians the same sick leave and vacation leave benefits to which county employees are entitled, the librarians have a vested right in any unused leave they accrued. The county may pay out the law librarians' sick leave and vacation leave balances or, if the board of commissioners and library board deem it desirable that the librarians keep the leave they have already accrued, the board of commissioners and library board may agree to have the county pay the law library association to assume those balances. Sick leave and vacation leave benefits that accrued prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363 remain the obligation of the county, and are not subject to allocation under Am. Sub. H.B. 66 and Sub. H.B. 363, regardless of whether the county directly pays the librarians for their unused leave, or pays the law library association to assume the librarians' unused balances.
6. If the board of trustees of the county law library association and the board of county commissioners agree to have the library association pay the cost of insurance for the law librarians during the transition period established by Am. Sub. H.B. 66 and Sub. H.B. 363, the board of county commissioners may not include the librarians in the insurance plans provided to county officers and employees under R.C. 9.833 and R.C. 305.171. Similarly, neither the board of county commissioners nor the library board will have the authority to include library employees in county insurance plans beginning in 2011, when the library association becomes responsible for paying the entire amount of the librarians' compensation. If, however, the library board and board of county commissioners agree to have the county pay the cost of insurance during the period of transition, the board of county commissioners has the discretion to include the li-

brarian and up to two assistant librarians in the insurance plans it offers to county officers and employees. If it does so, the county's cost for including the librarians in the county's insurance plans shall be counted towards its allocation requirement under R.C. 3375.49.

7. Employees of a county law library are members of the Public Employees Retirement System (PERS) under R.C. 145.01(A) and R.C. 145.01(B). Neither Am. Sub. H.B. 66 nor Sub. H.B. 363 changed the status of county law library employees as members of PERS.
8. Under R.C. 145.01(R), the costs paid by a county or law library association for insurance benefits for county law library employees are not included in the employees' "compensation" for purposes of their PERS benefits.
9. Mandatory employer contributions to PERS, the state unemployment compensation fund, and workers' compensation state insurance fund are the obligation of the county law library association, and are not "compensation" subject to allocation between the law library association and county under R.C. 3375.48 and R.C. 3375.49, as amended by Am. Sub. H.B. 66 and Sub. H.B. 363.

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**To: Raymond C. Fischer, Wood County Prosecuting Attorney, Bowling Green, Ohio**

**By: Marc Dann, Attorney General, June 12, 2007**

You have asked several questions about the implementation of Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. Sept. 29, 2005), which incrementally transfers, from the counties to the county law library associations, the duty to pay certain expenses incurred by the law library associations. Your questions relate specifically to the manner in which the county law librarians' compensation, and that of the assistant librarians, should be allocated during this period of transition.

### **Statutory Scheme**

Briefly stated, a county law library association may be organized as a private association or as a nonprofit corporation under R.C. 1713.28. 1995 Op. Att'y Gen. No. 95-029; 1992 Op. Att'y Gen. No. 92-012. As a private organization, a county law library association is governed by its charter, by-laws, and other governing regulations. 1998 Op. Att'y Gen. No. 98-022; 1996 Op. Att'y Gen. No. 96-013; 1988 Op. Att'y Gen. No. 88-104. County law library associations may, however, receive financial support from public sources, as outlined below, as well as dues, fees, and gifts from private donors. *See* 2004 Op. Att'y Gen. No. 2004-010; 1998 Op. Att'y Gen. No. 98-022; 1995 Op. Att'y Gen. No. 95-029; 1992 Op. Att'y Gen. No. 92-012; 1988 Op. Att'y Gen. No. 88-104.

The board of trustees of a law library association (library board) is responsible for appointing the law librarian and assistant librarians. R.C. 3375.48.

Before the enactment of Am. Sub. H.B. 66 in 2005, the county common pleas court judges fixed the compensation of the county law librarian and that of not more than two assistant law librarians, upon the librarians' appointment by the library board; the compensation of these librarians was paid from the county treasury. R.C. 3375.48 (1995-1996 Ohio Laws, Pt. II, 3654, 3660 (Am. H.B. 284, eff. March 4, 1996)). In Am. Sub. H.B. 66 and Sub. H.B. 363, 126th Gen. A. (2006) (eff. Aug. 3, 2006), the General Assembly made, for our purposes, two significant changes to this arrangement. First, Am. Sub. H.B. 66 amended R.C. 3375.48 to transfer, from the judges of the common pleas court to the library board, the authority to fix the compensation of the law librarian and assistant librarians. Second, Am. Sub. H.B. 66 and Sub. H.B. 363 amended R.C. 3375.49 to divide between the law library association and the county the responsibility for paying the compensation of the librarian and up to two assistant librarians, with the proportion of the county's share decreasing (and the library association's share proportionally increasing) each calendar year until 2011, when the law library association will begin to pay the entire amount of the librarians' compensation.<sup>1</sup> For example, in 2007, the board of county commissioners will pay 80% of the compensation of the law librarian and

<sup>1</sup> Before the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363, the board of county commissioners was required to provide, "at the expense of the county, suitable rooms with sufficient and suitable bookcases in the county courthouse or, if there are no suitable rooms in the courthouse, any other suitable rooms at the county seat with sufficient and suitable bookcases." R.C. 3375.49 (1981-1982 Ohio Laws, Pt. I, 356, 375 (Am. Sub. S.B. 114, eff. Oct. 27, 1981)). The board of county commissioners was also required to "heat and light any such rooms." *Id.* Under the law, as amended by Am. Sub. H.B. 66 and Sub. H.B. 363, the board of county commissioners is still required to provide, for the use of the law library, space in the county courthouse or another building located in the county seat, and utilities for that space. R.C. 3375.49. Through calendar year 2007, the board of county commissioners remains responsible for paying the costs of the space in the courthouse or other location, the utilities for that space, and furniture and fixtures for the law library. *Id.* During calendar years 2008-2011, the board of county commissioners and library board will follow a method for sharing the costs of these expenses, similar to the method for sharing the costs of the librarians' compensation. *Id.* The county will pay less and the law library association will pay proportionately more each year, until 2012, when the library association will begin to pay the entire amount of the costs for the library's space, utilities, furniture, and fixtures. *Id.*

In addition to assistance from the county, a law library association is entitled to receive fines, penalties, and forfeited bail collected by municipal courts, the county court, and probate and common pleas courts, R.C. 3375.50-.52; the association is also entitled to receive fifty percent of the fines, penalties, and forfeited bail generated from prosecutions for state liquor and state traffic offenses in any court within the county, R.C. 3375.53. *See State ex rel. Bd. of Trustees v. Vogel*, 169 Ohio St. 243, 159 N.E.2d 220 (1959); 2004 Op. Att'y Gen. No. 2004-010. The new legislation did not affect payment of the fines, penalties, and bail to law library associations, and these moneys now may be used to pay for, *inter alia*, the compensa-

assistant librarians, and the board of trustees of the law library association will pay 20%. R.C. 3375.49(B). In 2010, the board of county commissioners will pay 20% and the library board will pay 80%. *Id.*

### **“Compensation” Includes Fringe Benefits**

You have asked what constitutes “compensation” for purposes of R.C. 3375.48 and R.C. 3375.49, which provide for fixing and paying the compensation of the law librarian and up to two assistant librarians. The statutory authority to fix “compensation” includes the authority to establish both salary and fringe benefits, such as medical insurance, life insurance, and paid leave, in the absence of any statute that constricts such authority, and so long as such benefits are in excess of any minimum levels established by statute. *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 33, 406 N.E.2d 1098 (1980) (“[i]t should be obvious that sick leave credits, just as other fringe benefits, are forms of compensation”). See *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (fringe benefits such as the county’s payment of health insurance premiums on behalf of county officers and employees “are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check”); *Madden v. Bower*, 20 Ohio St. 2d 135, 137, 254 N.E.2d 357 (1969) (“[t]he purpose of an employer, whether public or private, in extending ‘fringe benefits’ to an employee is to induce that employee to continue his current employment,” and the payment of insurance premiums for a county employee “is a part of the cost of the public service performed by such employee”); 1982 Op. Att’y Gen. No 82-006 at 2-16 to 2-17 (“a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his current employment”). Neither R.C. 3375.48 nor R.C. 3375.49 limits the term “compensation,” nor is there other statutory language limiting the authority to fix the compensation of the law librarian and assistant librarians or dictating the provision of certain benefits. Thus, the common pleas judges had the authority to grant the librarians a salary and fringe benefits as the judges deemed proper, and the library board has such authority now. <sup>2</sup>

### **Pro-ration of Compensation**

You have asked whether the reduction in the percentage of compensation paid by the county, and the increase in the percentage of compensation paid by the library association, applies to fringe benefits as well as salary. Because, as discussed above, the term “compensation” includes fringe benefits, the county commissioners and library board must include the cost of any fringe benefits fixed by the library board, as well as the librarians’ salary, in the allocation of their respective payments of compensation in accordance with Am. Sub. H.B. 66 and Sub. H.B. 363.

tion of the librarians appointed under R.C. 3375.48. R.C. 3375.54 (as amended by Am. Sub. H.B. 66).

<sup>2</sup> As we will discuss, *infra*, contributions paid by an employer to the Public Employees Retirement System (PERS), the state unemployment compensation fund, and the workers’ compensation state insurance fund are not fringe benefits, and do not constitute “compensation” for purposes of R.C. 3375.48 and R.C. 3375.49.

The legislation does not, however, require that each component of compensation—that is, the salary, and each type of benefit—be allocated separately in accordance with the percentages set forth in R.C. 3375.49. After the library board fixes the compensation package of each librarian, including, if it so desires, fringe benefits, the board can compute the value of that package; then, the library board and board of county commissioners may agree to divide the payment of each component's cost as they wish, so long as the cost of the total compensation package is allocated in accordance with the percentages set forth in Am. Sub. H.B. 66 and Sub. H.B. 363.<sup>3</sup> See generally *State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365 (1960) (“[w]here a statute clearly confers power to do a certain thing without placing any limitation as to the manner or means of doing it, and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption is that it should be performed in a reasonable manner *not in conflict with any law of the state*”); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”). Furthermore, nothing prevents the county commissioners and library board from renegotiating their respective obligations each year, again so long as the cost of the total compensation package is allocated in accordance with the percentages set forth in amended R.C. 3375.49 for that year.

### **Treatment of Librarians' Fringe Benefits**

You have asked us to apply the transition scheme established by Am. Sub. H.B. 66 and Sub. H.B. 363 to the elements of compensation that were provided to the county law librarian and assistant law librarians prior to the enactment of this legislation. As described above, the authority to fix the compensation of the law librarian and assistant librarians, as exercised by the common pleas judges, and now the board of trustees, is a broad one. Because no benefits are statutorily required to be provided, nor statutorily precluded from being provided, the fringe benefits granted to law librarians have varied, and likely will continue to vary, from county to county. As we address Wood County's questions, we will set forth several guiding principles that may be applied to other counties' compensation schemes as well.

### **County Law Librarians Are Not County Employees**

Prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363, the Wood County common pleas judges, acting within the scope of their discretion, granted law librarians, as part of the librarians' compensation, the same fringe benefits enjoyed by county employees. The law librarians are not, however, county employ-

<sup>3</sup> You have asked how payroll should be handled, and whether the librarians will receive one check (and, if so, from the county or law library association) or two checks—one from the county and one from the law library association. These are not legal questions, but rather administrative and auditing questions, and you may wish to contact the Auditor of State's office for guidance.

ees who are entitled, as a matter of statute, to county benefits. This proposition may seem inconsistent with earlier opinions of the Attorney General, and we take this opportunity to clarify why employees of a county law library association are not county employees (and were not county employees prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363).

We begin with 1988 Op. Att’y Gen. No. 88-095 and 1991 Op. Att’y Gen. No. 91-061, which concluded that the positions of county law librarian and assistant law librarian, respectively, are in the civil service under R.C. Chapter 124. The opinions reached this conclusion based on the language of R.C. 124.11(A)(7)(b), which includes in the unclassified service the “library staff of any library in the state supported wholly or in part at public expense.” The opinions reasoned that, because a county law library was supported in part at public expense, *see note , supra*, and because there was “no indication that the General Assembly intended to exclude law libraries from the scope of R.C. 124.11(A)(7)(b),” the positions were in the unclassified civil service.<sup>4</sup> 1988 Op. Att’y Gen. No. 88-095 at 2-465. The opinions further reasoned that, “if the county law librarian was in the civil service as defined by R.C. 124.01(A), it follows that she was also ‘in the service of’ the state, county, or a political subdivision.” *Id.* at 2-464.

The reasoning of the opinions was, however, flawed—their analysis should have begun with determining whether the librarian position was in the service of the state, a county or other political subdivision. If it were, then it would be proper to determine whether the position is one that falls within R.C. Chapter 124’s definition of “civil service.” *In re Appeal of Ford*, 3 Ohio App. 3d 416, 419, 446 N.E.2d 214 (Franklin County 1982) (R.C. 124.01 includes only the state and specified political subdivisions within the definition of civil service, so that employment with all other

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<sup>4</sup> The “civil 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.*” (Emphasis added.) R.C. 124.01(A). “The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state” are “divided into the unclassified service and the classified service.” R.C. 124.11. *See also* R.C. 124.01(C) (the “classified service” means “the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships”); R.C. 124.11(B) (“[t]he classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts of the state, not specifically included in the unclassified service”); R.C. 124.11(B)(1) (the competitive class “shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts of the state ... for which it is practicable to determine the merit and fitness of applicants by competitive examinations”).

political subdivisions is not included within the definition of civil service);<sup>5</sup> *Spi- taleri v. Metro RTA*, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980) (employees of a regional transit authority are not entitled to the wages or fringe benefits provided under R.C. Chapter 124 because they are employees of a political subdivision of the state to which R.C. Chapter 124 has not been made applicable). Only after determining that the position is in the service of the state, county, or other political subdivision named in R.C. 124.01, and thus in the civil service, would it be proper to examine whether the position is in the classified or unclassified service. As explained in 1995 Op. Att’y Gen. No. 95-018 at 2-102, “in order for a position to be in the unclassified civil service pursuant to R.C. 124.11(A)(7)(b), it must be not only a position described in R.C. 124.11(A)(7)(b), but *also* a position that is in the service of the state, or a county, city, civil service township, city health district, general health district, or city school district.” The opinion continued: “It is this element that is critical in analyzing the nature of employment” by a library. *Id.* Accord 1996 Op. Att’y Gen. No. 96-057. 1991 Op. Att’y Gen. No. 91-061 and 1988 Op. Att’y Gen. No. 88-095 failed, however, to address this “critical element.” The fact that a county law library is supported in part at public expense does not necessarily mean that its employees are within the civil service under R.C. Chapter 124—the library positions must also be employment by the state, or a county, city, civil service township, city health district, general health district, or city school district.<sup>6</sup>

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<sup>5</sup> *In re Appeal of Ford*, 3 Ohio App. 3d 416, 446 N.E.2d 214 (Franklin County 1982) sets forth a two-part test for determining whether a position constitutes “employment in the service of” the state: First, it must be employment by a state agency, and second, compensation must be paid in whole or in part from state funds, regardless of the source of the funds. 3 Ohio App. 3d at 420. We see no reason why *Ford* would not be applicable to analyzing whether a position is in the service of the county or other political subdivision named in R.C. 124.01 and R.C. 124.11.

<sup>6</sup> We also must take issue with the related analysis in 1991 Op. Att’y Gen. No. 91-061. The opinion focused on the definition of “employee” in R.C. 124.01(F) as “any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer.” An “appointing authority” means “the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution.” R.C. 124.01(D). 1991 Op. Att’y Gen. No. 91-061 reasoned that, R.C. 3375.48 vests power in the board of trustees of the law library association to appoint library assistants “to their civil service positions,” and that, therefore, the assistants hold a position subject to appointment as required by R.C. 124.01(F). *Id.* at 2-296. The opinion further asserted that, “[a]lthough the law library association itself is a private entity ... it is the nature of the position of law library assistant which places it in the civil service and not the nature of the appointing authority,” citing *In re Appeal of Ford*. *Id.* However, the opinion misconstrues *Ford*.

In *Ford*, the court addressed whether the employees of the State Teachers Retirement System (STRS) were employees in the civil service. In determining



Although later opinions—1995 Op. Att’y Gen. No. 95-018 and 1996 Op. Att’y Gen. No. 96-057—recognized that 1991 Op. Att’y Gen. No. 91-061 and 1988 Op. Att’y Gen. No. 88-095 incorrectly failed to address whether positions with a county law library were positions in the service of the state, or one of the political subdivisions named in R.C. Chapter 124, they went on to note in dicta<sup>7</sup> that the “statutory scheme governing county law libraries, however, strongly suggests that county law library employees are in the service of the county for purposes of R.C. Chapter 124.” 1996 Op. Att’y Gen. No. 96-057 at 2-218, n.5; 1995 Op. Att’y Gen. No. 95-018 at 2-102, n.7. We must disagree with this assessment, as well as with the analyses set forth in 1991 Op. Att’y Gen. No. 91-061 and 1988 Op. Att’y Gen. No. 88-095. A county law library association is not an agency or subdivision of county government; thus, a law librarian and assistant law librarians employed by a county law library association are not employees of county government and do not hold positions of employment in the service of the county in the absence of a statute to the contrary.

A county law library association is not an agency or subdivision of county government because it is a private entity. As explained above, a county law library association is not created by statute, but is a private organization that is organized as an unincorporated association or a nonprofit corporation under R.C. 1713.28. *See generally State ex rel. Pugh v. Sayre*, 90 Ohio St. 215, 107 N.E. 512 (1914). It is not governed by statute, but by its charter, by-laws, and other governing regulations, and its board members and officers are elected or appointed pursuant thereto. Factors such as these led the court in *Ohio Historical Society v. State Employment Relations Board*, 66 Ohio St. 3d 466, 613 N.E.2d 591 (1993) to conclude that the Ohio Historical Society is not a public employer for purposes of the public employees collective bargaining act, R.C. Chapter 4117.<sup>8</sup> *See also* 1999 Op. Att’y Gen. No. 99-028 (a convention and visitors’ bureau is not a “county board,” and is not entitled

whether the employees were in the “service of the state,” the court found, that, “in the broadest sense,” STRS is an appointing authority, and “R.C. 124.01(F) would define its appointees as being employees.” 3 Ohio App. 3d at 420. The court explained further, however, that “service of the state” requires “(1) employment by a state agency, and (2) compensation being paid in whole or in part from state funds, whether general or special, regardless of the source of such state funds.” *Id.* Thus, the nature of an employee’s appointing authority may not be the only criterion in determining whether the employee is covered by R.C. Chapter 124, but it is an essential one. *See also* 1985 Op. Att’y Gen. No. 85-012 (a regional organization for civil defense is not a county agency, and thus its employees are not in the service of a county). The appointing authority must be an agency of the state or of one of the political subdivisions named in R.C. 124.01 and R.C. 124.11. As discussed, *infra*, a county law library association is neither.

<sup>7</sup> Neither opinion dealt with a county law library.

<sup>8</sup> In making its determination, the court, in *Ohio Historical Society v. State Employment Relations Board*, 66 Ohio St. 3d 466, 476-77, 613 N.E.2d 591 (1993), noted the following factors: (1) the Society is a private, not-for-profit corporation that was created by a group of individuals, in their capacities as private citizens, and

to representation or legal advice from the county prosecutor because it is a private, nonprofit corporation governed by a board of trustees selected in accordance with its code of regulations; the county has no statutory duty to establish, operate, or supervise such an entity as a component of county government, and the county exercises no authority or control over the entity); 1979 Op. Att’y Gen. No. 79-061 at 2-204 (a “privately organized entity that performs a public purpose occupies a status no different from that of countless other non-profit corporations, the private nature of which is indisputable,” so long as it has no statutorily defined duties that involve some exercise of the sovereign power).

Under former R.C. 3375.48 and R.C. 3375.49, the law library association was entitled to receive county support if it made its facilities available to designated public officials; however, the county had no power to withhold funds so long as the association complied with this condition.<sup>9</sup> *State ex rel. Mahoning Law Library Ass’n v. Board of Commissioners*, 53 Ohio St. 2d 56, 372 N.E.2d 349 (1978); *State ex rel. Bd. of Trustees v. Vogel*, 169 Ohio St. 243, 159 N.E.2d 220 (1959); *Akron Law Library Ass’n v. Morgan*, 13 Ohio App. 3d 119, 468 N.E.2d 384 (Summit County 1983). See also 1999 Op. Att’y Gen. No. 99-028 at 2-188 (“[t]he county exercises no authority or control over the [nonprofit corporation operating as a convention and visitors’ bureau], except that which accrues indirectly from the

is governed by a constitution written and adopted by its members; (2) a board of trustees runs the Society, and the corporate constitution, not a state statute, provides that half of the trustees are elected from the Society’s membership and half are appointed by the Governor of Ohio; (3) neither the Society’s leaders nor its members are subject to the political process—the members of its board, whether appointed by the Governor or elected by the membership, are responsible to the membership of the Society alone, and its corporate officers are responsible to the board alone; (4) Ohio citizens exercise no direct or indirect control over the Society.

<sup>9</sup> Under previous law, a law library association was required to furnish to all members of the General Assembly, county officers, and judges of the several courts in the county admission to its library and the use of its books free of charge, to qualify for county funding and in-kind support under R.C. 3375.48 and R.C. 3375.49. Am. Sub. S.B. 114 (1981); Am. H.B. 284 (1996). To receive the fine, penalty, and bail money under R.C. 3375.50-.53, an association was required to provide county court judges in the county and officers of the townships and municipal corporations in the county the same free use of the books of the law library as the judges and county officers. R.C. 3375.55. 1961 Ohio Laws 582, 788 (Am. H.B. 1, eff. Jan. 10, 1961).

Under Am. Sub. H.B. 66, an association must furnish to all of the members of the General Assembly, the officers of the county, and the judges of the courts in the county admission to its law library and the use of its books, materials, and equipment free of charge in order to receive the fine, penalty, and bail money under R.C. 3375.50-.53. R.C. 3375.48. The association must also provide the same free use of books, materials, and equipment to officers of the townships and municipal corporations within the county. R.C. 3375.55.

power to grant or withhold the funds available”). We also find significant that, regardless of whether the association receives public funds, it is *not* required by statute to provide free access or make its resources available to the general public. 1996 Op. Att’y Gen. No. 96-013; 1989 Op. Att’y Gen. No. 89-070. And, the General Assembly is “weaning” law library associations off county support, thereby further weakening the argument that such an association is a county body. The fact that a law library association has been eligible to receive county support simply is insufficient to make the association an agency or subdivision of county government.<sup>10</sup>

We recognize that county law libraries historically have been identified with the county in which they are located. In *Ohio Historical Society*, the court noted that, the Society’s origins and development “highlight[] the tension between the Society’s public and private roles,” but found nonetheless that, the fact that the Society historically has had, and continues to have, “a close relationship with the state does not make it an arm of the state.” 66 Ohio St. 3d at 471-72, 477. Similarly, a law library association’s ties with the county does not alter its fundamental nature as a private organization.

In light of the foregoing, we overrule 1991 Op. Att’y Gen. No. 91-061 and 1988 Op. Att’y Gen. No. 88-095.<sup>11</sup> Because law librarians are not employed by an agency of county government, they are not county employees or employees in the service of the county and are not, therefore, entitled to receive compensation prescribed by statute for county employees or employees in the service of the county, unless specifically included within a particular statutory scheme.<sup>12</sup> Although the Wood County judges, in the exercise of their discretion, provided the librarians

<sup>10</sup> In *Ohio Historical Society*, the court noted that sixty-five to seventy percent of the Society’s total operating budget was composed of state appropriations, yet held that its employees were not public employees. 66 Ohio St. 3d at 473. *See also* 1999 Op. Att’y Gen. No. 99-028 at 2-188 (“[t]he [corporation], by serving as a convention and visitors’ bureau, performs a public purpose that the General Assembly deems worthy of public financial support, but the [corporation] is not required to do so by law and no statute governs the manner in which this service is to be performed”).

<sup>11</sup> We do not disagree with the proposition set forth in 1988 Op. Att’y Gen. No. 88-095 that a county employee who previously served in a part-time position with the state, county, or other political subdivision of the state is entitled, under R.C. 9.44 and R.C. 325.19, to service credit, for purposes of accruing vacation leave, for each biweekly pay period during which she actually worked in the part-time position, regardless of the number of installments in which her compensation was paid. We disagree merely with the application of this principle to a county employee who previously served as a county law librarian, since employment with a county law library association is not employment with the state, a county, or other political subdivision.

<sup>12</sup> Compare, for example, R.C. 145.01, which as discussed below, specifically makes a county law library a “public employer,” and law library employees “pub-

with the same benefits the county employees received, nothing in statute required them to do so.

### **Treatment of Accrued Leave Benefits**

Because the judges did provide the librarians with the same benefits as county employees, we turn now to address your questions about the treatment of certain fringe benefits. The county benefits previously afforded the law librarians by the common pleas judges included the ability to accrue unused sick leave and vacation leave, and you have asked how the librarians' unused leave balances should be treated during this period of transition.

County employees receive 4.6 hours of paid sick leave for each 80 hours of service they complete, and sick leave is cumulative without limit. R.C. 124.38. Once earned, sick leave credit granted to a county employee under R.C. 124.38 becomes a vested right of the employee. *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d at 34. *See South Euclid Fraternal Order of Police v. D'Amico*, 13 Ohio App. 3d 46, 47, 468 N.E.2d 735 (Cuyahoga County 1983) (interpreting R.C. 124.38, "[t]he employing unit does not 'grant' sick leave; the employee earns it and accumulates it as a vested right"). *See also State ex rel. Reuss v. City of Cincinnati*, 102 Ohio App. 3d 521, 524, 657 N.E.2d 551 (Hamilton County 1995) ("the right to transfer accumulated, unused sick leave credit [under R.C. 124.38] is a vested right"); <sup>13</sup> *Fraternal Order of Police, Lodge 39 v. City of East Cleveland*, 64 Ohio App. 3d 421, 424, 581 N.E.2d 1131 (Cuyahoga County 1989) ("R.C. 124.38 and R.C. 124.39 are closely related since R.C. 124.38 creates vested rights in sick leave and R.C. 124.39 provides the method for a retiring employee to receive a percentage of his/her accrued sick time in cash"—a city may not, under its home rule power, deny its employees their right to compensation

lic employees" for purposes of the Public Employee Retirement System (PERS). In *Spitaleri v. Metro RTA*, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980), the court found that employees of a regional transit authority are not public employees for purposes of statutory benefits, except that R.C. 306.45 explicitly makes them "public employees" under R.C. 145.01 for purposes of PERS. The court interpreted this explicit inclusion of RTA employees in PERS as "exemplifying a legislative intent that RTA employees are to be public employees for the specific and limited purpose of participating in PERS. It can be argued, persuasively, that if RTA employees were intended to be public employees for all purposes, then there would have been no need for R.C. 306.45." 67 Ohio App. 2d at 61. It is equally persuasive to argue that, if employees of a law library association were county employees, there would have been no need for the General Assembly to specifically include them in the definition of "public employee" in R.C. 145.01.

<sup>13</sup> R.C. 124.38 states that, an "employee who transfers from one public agency to another shall be credited with the unused balance of the employee's accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers."

under R.C. 124.39).<sup>14</sup> *Cf. Davenport v. Montgomery County*, 109 Ohio St. 3d 135, 2006-Ohio-2034, 846 N.E.2d 504, at ¶ 19 (“[a]lthough R.C. 124.39(B) does permit public employees to convert accrued, unused sick leave into cash upon retirement, conversion of sick leave is neither an entitlement nor a retirement benefit”).

County employees are entitled similarly to vacation leave that they have accrued. A county employee “shall have earned and will be due upon the attainment” of the first year of employment and annually thereafter, eighty hours of vacation leave with pay. R.C. 325.19. At various intervals thereafter, a county employee “shall have earned and is entitled” to additional hours of vacation leave with pay. *Id.* Employees with more years of service accrue vacation leave at greater rates. *Id.*<sup>15</sup> Statutes granting vacation leave to state employees use the same “earned and due” and “earned and entitled” language, R.C. 124.13; R.C. 124.134, and have been interpreted as entitling a state employee to vacation leave he has accrued. As stated by the court in *State ex rel. Swartzmiller v. Masheter*, 120 Ohio App. 197, 198, 201 N.E.2d 712 (Franklin County 1964), “annual vacation leave is not generally considered, and by [what is now R.C. 124.13] is not granted, as a matter of privilege. Rather, as the statute states, it is ‘earned’ and is ‘due.’ It constitutes compensation for past services already performed.”<sup>16</sup> *See Harden v. Ohio Attorney General*, 101 Ohio St. 3d 137, 2004-Ohio-382, 802 N.E.2d 1112, at ¶ 9 (“vacation leave as granted by R.C. 124.134 accrues at specified periodic rates and becomes vested after an employee has worked the requisite number of hours to earn it”). We see no reason for interpreting R.C. 325.19 differently for county employees. *See* 2002 Op. Att’y Gen. No. 2002-011 (a county employee does not accrue vacation leave until that vacation leave has been earned, and once earned, the employee is

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<sup>14</sup> R.C. 124.39(B) states that an employee of a political subdivision “may elect, at the time of retirement from active service with the political subdivision, and with ten or more years of service with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of the employee’s accrued but unused sick leave credit. The payment shall be based on the employee’s rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the employee at the time payment is made.”

<sup>15</sup> Unlike sick leave, however, county vacation leave may not be accumulated without limit. R.C. 325.19(C) states that: “Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of the employee’s employment, provided that the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over the employee’s vacation leave to the following year. No vacation leave shall be carried over for more than three years.”

<sup>16</sup> *Cf.* R.C. 124.386 (state employees are credited with thirty-two hours of personal leave each December, and an employee who separates from service receives a reduction in that credit for each pay period that remains between the date of separation and the next succeeding December; if the reduction results in a number of hours less than zero, the cash equivalent of that number is deducted from any compensation that remains payable to the employee at the time of separation).

entitled to it); 1982 Op. Att’y Gen. No. 82-093 (a county employee is entitled to use vacation leave as soon as it accrues).

Assuming that the judges’ resolutions fixing the compensation of the law librarians provided these same benefits prior to the effective dates of Am. Sub. H.B. 66 and Sub. H.B. 363, the librarians continue to have a vested right in the benefits they earned or accrued under the resolutions, and the accrued but unused benefits remain the obligation of the county. *See, e.g.*, R.C. 5705.13(B) (“[a] taxing authority of a subdivision, by resolution or ordinance, may establish a special revenue fund for the purpose of accumulating resources for the payment of accumulated sick leave and vacation leave, and for payments in lieu of taking compensatory time off, upon the termination of employment or the retirement of officers and employees of the subdivision”); *State ex rel. Swartzmiller v. Masheter*, 120 Ohio App. at 198 (annual vacation leave “constitutes compensation for past services already performed”).

Again, the board of county commissioners and library board may exercise their discretion in addressing this obligation. The county may pay out the librarians’ leave balances, leaving them with no accrued leave. Or, if the county commissioners and library board deem it desirable that the librarians keep the time they have already accrued, they could agree to have the county pay the library board to assume those balances. Because payment of the leave balances is an obligation the county incurred prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363, however, the cost thereof is not subject to allocation under the legislation, but remains entirely the obligation of the county. Regardless of whether the county directly pays the librarians for their unused leave, or the county commissioners and library trustees agree to have the county pay the library association to assume the balances, such payment would not be credited towards the county’s obligation under amended R.C. 3375.49.

### **Insurance Benefits**

You have also asked about the participation of county law librarians in the group insurance plans procured by the board of county commissioners for county employees under R.C. 305.171.<sup>17</sup> As discussed above, insurance benefits are fringe benefits that may be included as part of “compensation,” and an appointing authority that has the authority to fix the compensation of its employees may provide insurance as part of that compensation, in the absence of any constricting statutory language. *See State ex rel. Parsons v. Ferguson*; 2003 Op. Att’y Gen. No. 2003-

<sup>17</sup> A board of county commissioners is authorized to procure and pay for various types of group insurance policies “for county officers and employees and their immediate dependents from the funds or budgets from which the county officers or employees are compensated for services.” R.C. 305.171(A). A board of county commissioners also has the authority to provide these benefits through a self-insurance program as provided in R.C. 9.833, which we understand Wood County has done. *See* R.C. 305.171(E).

026. As part of the authority it now has to set the librarians' compensation, the library board may (but is not required to) provide them various insurance benefits.<sup>18</sup>

In accordance with the discussion above, the board of county commissioners and library board may take the costs associated with each benefit and divide the expense in accordance with the appropriate proportion set forth in R.C. 3375.49, or the county commissioners and library board may include the costs of providing insurance with the librarians' salary and the other fringe benefits being offered, and divide the package as a whole in accordance with R.C. 3375.49.

Prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363, the common pleas judges provided the law librarians with insurance benefits, and the Wood County board of commissioners allowed the librarians to participate in the same insurance plans it offered to county employees, presumably since the librarians' compensation was paid from the county treasury. You have asked whether the librarians may continue to participate in county benefit plans at rates for county employees, again, recognizing that law librarians are not county employees.

If the library board and county commissioners agree to have the library board pay the cost of insurance during the transition period established by Am. Sub. H.B. 66 and Sub. H.B. 363, we see no basis on which the board of county commissioners could include the library employees in the insurance plans provided to county officers and employees under R.C. 305.171. Similarly, neither the board of county commissioners nor the library board will have the authority to include library employees in county insurance plans beginning in 2011, when the library association becomes responsible for paying the entire amount of the librarians' compensation. If, however, the library board and county commissioners agree to have the county pay the cost of insurance during the period of transition, we feel it is appropriate to read R.C. 305.171 and R.C. 3375.49 *in pari materia*, and conclude that the board of county commissioners has the discretion to include the librarian and up to two assistant librarians in the insurance plans it offers to county officers and employees. See 1970 Op. Att'y Gen. No. 70-048 (R.C. 305.171 should be read *in pari materia* with R.C. 3501.17 and R.C. 3501.141, which relate to the purchase

<sup>18</sup> You have noted in your request for an opinion, that R.C. 141.05 excludes from the compensation of common pleas and probate court judges the costs or premiums paid for health, medical, hospital, dental, or surgical benefits paid on a judge's behalf by the county or the State, and you ask whether the same is true for the compensation of law librarians under R.C. 3375.48. R.C. 141.05 is a statutory exception for a specific, limited group of public officers—judges of common pleas courts and probate courts—and is not applicable to law library employees. See 1990 Ohio Op. Att'y Gen. No. 90-092 at 2-394, n. 2 (the "general assembly clearly expressed its intention" that the definition of "compensation" in R.C. 141.05 is limited to that section, and "I am not precluded from finding that health insurance benefits are a component of compensation for purposes of R.C. 305.171"). Indeed, the fact that the General Assembly found it necessary to explicitly exclude the named health benefits from the meaning of "compensation" connotes a general understanding that the benefits are otherwise included within the term's meaning.

of insurance by a county board of elections for its employees). The county's cost for including the librarians in the county's insurance plans would be counted towards its allocation requirement under R.C. 3375.49.

### **Membership in the Public Employees Retirement System**

You have asked whether law library employees may continue their membership in the Public Employees Retirement System (PERS) during and after the transition. R.C. 145.01(A) includes as a "public employee," who is required to be a member of PERS, any person "employed and paid in whole or in part by" any county or county law library. *See also* R.C. 145.01(B) (a "member" of PERS is "any public employee"); R.C. 145.03 (compulsory membership in PERS); R.C. 145.47 (contributions of public employees to PERS). R.C. 145.01(D) includes any county or county law library as an "employer" or "public employer" that must comply with R.C. Chapter 145 with regard to its employees. *See, e.g.,* R.C. 145.12, R.C. 145.48, and R.C. 145.51 (mandatory employer contributions). Neither Am. Sub. H.B. 66 nor Sub. H.B. 363 amended R.C. Chapter 145 with regard to law library employees nor otherwise changed the status of law library employees as members of PERS. Therefore, law library employees may (indeed, must) continue membership in PERS during and after the transition.

You have also asked whether the portion of the costs for health, medical, hospital, dental, and surgical benefits (or any combination thereof) paid on behalf of the library employees is included in their compensation for purposes of their PERS benefits.

Retirement benefits are based, in part, on an employee's "final average salary." *See, e.g.,* R.C. 145.33 (age and service retirement); R.C. 145.36-.361 (disability benefits). An employee's "final average salary" is computed by dividing by three the sum of the three full calendar years of contributing service in which the member's *earnable salary* was highest. R.C. 145.01(K)(1). *See also* R.C. 145.47 (public employees must contribute a percentage of their "earnable salary" to PERS). An employee's "earnable salary" includes "all salary, wages, and other earnings paid to a contributor by reason of employment in a position covered by the retirement system." R.C. 145.01(R)(1). Explicitly excluded from "earnable salary" are "[a]mounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the contributor or the contributor's family, or amounts paid by the employer to the contributor in lieu of providing the insurance." R.C. 145.01(R)(2)(b). *See also* R.C. 145.01(R)(3) ("[t]he retirement board shall determine by rule whether any compensation not enumerated in division (R) of this section is earnable salary, and its decision shall be final"). This definition of "earnable salary" was in effect prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363, and was not changed thereby. Therefore, the portions of premiums, charges, and fees paid for insurance benefits on behalf of library employees are not included in the employees' "compensation" for purposes of their PERS benefits.

### **Mandatory Employer Contributions**

You have also asked about the treatment of certain costs employers are ob-



ligated by statute to assume, specifically employers' mandatory contributions to PERS, the state unemployment compensation fund, and the workers' compensation program. We will address each in turn.

### **Employer Contributions to PERS**

Mandatory employer contributions to PERS generally are not considered to be a fringe benefit to employees. *See* 1980 Op. Att'y Gen. No. 80-002, *overruled in part on other grounds by* 1981 Op. Att'y Gen. No. 81-099 and 1983 Op. Att'y Gen. No. 83-036, at 2-16 ("the legislative purpose in requiring [PERS employer] contributions is quite divorced from traditional notions regarding an employee's compensation"). Employers covered by R.C. Chapter 145 are statutorily mandated to contribute to PERS, and have no ability to fix the amount of contributions they pay on behalf of their employees, either on an individual basis or as a group. R.C. 145.12; R.C. 145.48; R.C. 145.51. 1989 Op. Att'y Gen. No. 89-087 aptly describes the nature of employer contributions (in this instance, an employing county's contributions) as follows:

Monies paid by the county into the "employers' accumulation fund" pursuant to R.C. 145.51 do not stand to the credit of any particular member or employer. The money remains in the fund regardless of whether a particular member leaves PERS and withdraws his or her individual contributions. Neither the county nor the member receive any refund of the employer contribution. *See* R.C. 145.23.

I note further that, although the amount paid by an employer is calculated as a percentage of the salaries of employees who are PERS members, R.C. 145.12; R.C. 145.48, this calculation is simply a mechanism for distributing the public cost of the system equally among public employers. The employers' rate is based upon the actuarial needs of PERS for the current year, regardless of the particular characteristics of the employer or the individual employees. R.C. 145.48. The potential benefit accruing to an individual does not differ based on the employer contribution. Thus, it can be seen that the purpose of the statutorily required employer contribution to PERS is not to add to the compensation of the individual with respect to whom the contribution is made. Rather, it is intended for the benefit of public employees as a group.

1989 Op. Att'y Gen. No. 89-087 at 2-413.

Even if an employer's contributions to PERS were considered a fringe benefit in a very broad sense of the term, they cannot be considered compensation under the language of R.C. 3375.48 and R.C. 3375.49. The former version of R.C. 3375.48 provided that the judges of the common pleas court "shall fix the compensation of [the librarians], which shall be paid from the county treasury." Am. H.B. 284 (1996). Thus, money paid from the county treasury was that used to pay the costs of the compensation fixed by the judges. As discussed above, PERS employer contributions are set by statute, and were not part of the compensation fixed by the common pleas court judges and paid from the county treasury. R.C.

3375.48 now states that the library board is “responsible for fixing and paying the compensation of [the librarians] subject to section 3375.49 of the Revised Code”; R.C. 3375.49 divides the responsibility for paying the librarians’ compensation between the county and library association, as discussed above. Again, PERS employer contributions are fixed by statute, and are beyond the ability of the library association to change. Because the employer contributions do not constitute compensation fixed and paid under R.C. 3375.48, they are not subject to allocation under R.C. 3375.49.

Furthermore, the fact that R.C. 145.01 explicitly names the library association as an employer for purposes of PERS—and did so before the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363, when the county was charged with fixing and paying the compensation of the law librarians—supports this conclusion. Nothing in the new legislation altered this scheme, and the library association remains the employer responsible for contributions to PERS on behalf of the law librarians. The contributions remain solely the obligation of the library association.

### **Unemployment Compensation**

Similarly, an employer’s payments to the state unemployment compensation fund<sup>19</sup> do not constitute fringe benefits for employees. 1980 Op. Att’y Gen. No. 80-002 explained that, employer contributions to the unemployment compensation and workers’ compensation systems “are statutorily required to be paid by virtually all employers, private as well as public.... The potential benefit that may accrue to an individual under these laws does not differ depending upon the employer involved.” *Id.* at 2-16. *See, e.g.*, R.C. 4141.24(C) (contributions to the unemployment compensation fund are “pooled and available to pay benefits to any individual entitled to benefits irrespective of the source of such contributions”). Indeed, unemployment compensation contributions are considered to be in the nature of an excise tax, imposed on the right to employ, rather than a component of an employee’s compensation. *State ex rel. Youngstown Sheet & Tube Co. v. Leach*, 173 Ohio St. 397, 183 N.E.2d 369 (1962). *See also* 1943 Op. Att’y Gen. No. 6207, p. 378, 382 (“the forceable exaction” of employer contributions to the unemployment compensation fund are taxes for purposes of Ohio Const. art. II, § 1d, which provides that laws providing for tax levies shall go into immediate effect, and are not subject to referendum).

And, again, the language of R.C. 3375.48 and R.C. 3375.49 precludes an employer’s participation in the unemployment compensation fund from being

<sup>19</sup> An employer must make “contributions” or “payments in lieu of contributions” to the state unemployment compensation fund. R.C. 4141.09; R.C. 4141.23; R.C. 4141.24. An employer that makes “payments in lieu of contributions” must reimburse the fund for benefits and extended benefits paid from the fund to its employees—the State and political subdivisions are “reimbursing” employers that make payments in lieu of contributions, unless they elect to become a “contributing” employer. R.C. 4141.242. Nonprofit organizations are “contributing” employers, but may elect to become a “reimbursing” employer. R.C. 4141.241.

included as “compensation” for purposes of those statutes. Employer participation is compulsory. R.C. 4141.23; R.C. 4141.241; R.C. 4141.242; R.C. 4141.27; R.C. 4141.38-40. An employer does not “fix” the amount of money he will contribute to the unemployment compensation fund, or pay in lieu of contributions, on behalf of any one employee. Contributions are based on the employer’s “annual payroll,” *see* R.C. 4141.01(J)-(L), and the contribution rate is established by the director of job and family services acting pursuant to statute, R.C. 4141.25. *See also* R.C. 4141.24; R.C. 4141.26. Contributions or payments to the unemployment compensation fund were not fixed by the common pleas judges prior to the legislative changes, nor are they fixed by the library board now. Therefore, they are not “compensation” for purposes of R.C. 3375.48 and R.C. 3375.49, and are not subject to allocation between the library association and the county. The payments remain the obligation of the library board.

### **Workers’ Compensation**

The same analysis is applicable to an employer’s participation in the state workers’ compensation program, either through premiums paid to the state insurance fund or through the direct payment of compensation and benefits as a self-insuring employer. 1980 Op. Att’y Gen. No. 80-002 explains that, “the entire purpose of the statutorily mandated workers’ compensation contributions is not to add to the compensation of the individual employee on whose behalf contributions are made.... mandatory workers’ compensation contributions protect the state as much as the individual and cannot fairly be viewed in the same category as take-home pay under traditional notions of an employee’s compensation package.” *Id.* at 2-16. Contributions made by employers for workers’ compensation, unemployment, and PERS benefits “are intended for the general benefit of employees as a group.” *Id.* at 2-16 to 2-17.

Participation in the workers’ compensation program, by both private and public employers, is compulsory. Ohio Const. art. II, § 35; R.C. 4123.01(B); R.C. 4123.35; R.C. 4123.353; R.C. 4123.38; R.C. 4123.41; R.C. 4123.46. The administrator of the Bureau of Workers’ Compensation sets the rates of premiums for classes of occupations and industries according to the degree of hazard based upon the total payroll in each of the classes. R.C. 4123.29; R.C. 4123.39. *See also* R.C. 4123.34; 10A Ohio Admin. Code Chapter 4123-17. Rates are actuarially determined to assure the solvency of the state insurance fund. R.C. 4123.29. *See also* R.C. 4123.30; R.C. 4123.34. Like employers’ unemployment compensation contributions, premiums paid by employers to the workers’ compensation state insurance fund are considered to be excise taxes. 2004 Op. Att’y Gen. No. 2004-026 (and authorities cited therein). Again, an employer’s workers’ compensation payments are not fixed as compensation by the library board (nor were they previously fixed by the common pleas judges) for purposes of R.C. 3375.48, and are not subject to allocation between the library board and county commissioners for purposes of R.C. 3375.49. The responsibility to pay workers’ compensation premiums continues to rest solely with the library association.

In conclusion, it is my opinion, and you are advised, that:

1. In Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. Sept. 29, 2005), the General Assembly amended R.C. 3375.48 to transfer, from the judges of the common pleas court to the board of trustees of the county law library association (library board), the authority to fix the compensation of the law librarian and assistant librarians. In Am. Sub. H.B. 66 and Sub. H.B. 363, 126th Gen. A. (2006) (eff. Aug. 3, 2006), the General Assembly amended R.C. 3375.49 to divide between the law library association and the county the responsibility for paying the compensation of the law librarian and up to two assistant librarians, with the proportion of the county's share decreasing, and the library association's share proportionally increasing, each calendar year until 2011, when the law library association will begin to pay the entire amount of the librarians' compensation.
2. The authority to fix and pay the compensation of a county law librarian and assistant librarians under R.C. 3375.48 and R.C. 3375.49 includes the authority to fix and pay to the librarians a salary and fringe benefits, such as paid leave, medical insurance, and life insurance. Thus, prior to the enactment of Am. Sub. H.B. 66, the common pleas judges had the authority to grant the county law librarian and assistant librarians a salary and fringe benefits, as the judges deemed proper, and the board of trustees of the county law library association has such authority now.
3. The board of county commissioners and the board of trustees of the county law library association must allocate the costs of the salary and fringe benefits that are fixed by the library board for the county law librarian and up to two assistant librarians in accordance with the percentages set forth in R.C. 3375.49, as amended by Am. Sub. H.B. 66 and Sub. H.B. 363. The board of county commissioners and library board need not allocate separately each component of a librarian's compensation in accordance with the percentages set forth in Am. Sub. H.B. 66 and Sub. H.B. 363, but may agree to divide the payment of each component of a librarian's compensation package as they wish, so long as the cost of the total compensation package is allocated in accordance with the percentages set forth in Am. Sub. H.B. 66 and Sub. H.B. 363.
4. A county law library association is not an agency or subdivision of county government, and law librarians and assistant law librarians are not county employees who are entitled to receive compensation prescribed by statute for county employees, unless they are specifically included within a particular statutory scheme. (1991 Op. Att'y Gen. No. 91-061 and 1988 Op. Att'y Gen. No. 88-095, overruled.)
5. If the judges of the common pleas court of the county, acting within their discretion under the former version of R.C. 3375.48, provided law librarians the same sick leave and vacation leave benefits to which county employees are entitled, the librarians have a vested right in any unused leave they accrued. The county may pay out the law librarians' sick leave and vacation leave balances or, if the board of commissioners and library board

deem it desirable that the librarians keep the leave they have already accrued, the board of commissioners and library board may agree to have the county pay the law library association to assume those balances. Sick leave and vacation leave benefits that accrued prior to the enactment of Am. Sub. H.B. 66 and Sub. H.B. 363 remain the obligation of the county, and are not subject to allocation under Am. Sub. H.B. 66 and Sub. H.B. 363, regardless of whether the county directly pays the librarians for their unused leave, or pays the law library association to assume the librarians' unused balances.

6. If the board of trustees of the county law library association and the board of county commissioners agree to have the library association pay the cost of insurance for the law librarians during the transition period established by Am. Sub. H.B. 66 and Sub. H.B. 363, the board of county commissioners may not include the librarians in the insurance plans provided to county officers and employees under R.C. 9.833 and R.C. 305.171. Similarly, neither the board of county commissioners nor the library board will have the authority to include library employees in county insurance plans beginning in 2011, when the library association becomes responsible for paying the entire amount of the librarians' compensation. If, however, the library board and board of county commissioners agree to have the county pay the cost of insurance during the period of transition, the board of county commissioners has the discretion to include the librarian and up to two assistant librarians in the insurance plans it offers to county officers and employees. If it does so, the county's cost for including the librarians in the county's insurance plans shall be counted towards its allocation requirement under R.C. 3375.49.
7. Employees of a county law library are members of the Public Employees Retirement System (PERS) under R.C. 145.01(A) and R.C. 145.01(B). Neither Am. Sub. H.B. 66 nor Sub. H.B. 363 changed the status of county law library employees as members of PERS.
8. Under R.C. 145.01(R), the costs paid by a county or law library association for insurance benefits for county law library employees are not included in the employees' "compensation" for purposes of their PERS benefits.
9. Mandatory employer contributions or payments to PERS, the state unemployment compensation fund, and workers' compensation program are the obligation of the county law library association, and are not "compensation" subject to allocation between the law library association and county under R.C. 3375.48 and R.C. 3375.49, as amended by Am. Sub. H.B. 66 and Sub. H.B. 363.