Note from the Attorney General's Office:

1987 Op. Att'y Gen. No. 87-067 was overruled in part by 1998 Op. Att'y Gen. No. 98-026.

OPINION NO. 87-067

Syllabus:

1. As of May 13, 1980, the effective date of Am. H.B. 333 (1979-1980 Ohio Laws, Part I, 2542), a county employee working less than forty hours per week but rendering service considered as full time by the office, department or agency of county service in which he was employed became entitled to the full amount of vacation leave prescribed by R.C. 325.19(A).

2. A county appointing authority who has not credited his full-time employees, as defined in R.C. 325.19(G)(1), with the entire amount of vacation leave to which they became entitled upon the amendment of R.C. 325.19 in 1979-1980 Ohio Laws, Part I, 2542 (Am. H.B. 333, eff. May 13, 1980) has the implied authority to correct his payroll records to reflect the full amount of vacation benefits to which such employees have been entitled.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 22, 1987

I have before me your opinion request concerning vacation benefits for county employees in which you ask the following questions:

> 1. From what date are full time county employees working less than forty hours per week entitled to the statutory accrual rate as set forth in 1985 O.A.G. 85-102, rather than the reduced rate set forth in 1977 O.A.G. No. 77-007?
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> 2. If a county employee has not been credited with the full amount of vacation leave to which he was entitled due to the county's following the procedure described in 1977 Op. Att'y Gen. No. 77-007, may the appointing authority credit such an employee with the additional vacation benefits to which such employee was entitled?

R.C. 325.19 prescribes vacation benefits to which county employees are entitled.[1] Your specific concern is the method prescribed by the statute for accruing vacation benefits and the manner in which that method has been altered over the past several years through various amendments to R.C. 325.19.

In order to answer your questions it is first necessary to examine the conclusions reached in the two opinions you mention, 1985 Op. Att'y Gen. No. 85-102 and 1977 Op. Att'y Gen. No. 77-007 (overruled in 1982 Op. Att'y Gen. No. 82-055). Op. No. 77-007 concludes in the syllabus that: "R.C. 325.19 authorizes the equivalent of two weeks vacation leave for full-time county employees upon the completion of one year of service, notwithstanding the fact that the county officer, who is the appointing authority, has established a standard work week of less than forty hours." At the time Op. No. 77-007 was issued, R.C. 325.19 (1975-1976 Ohio Laws, Part I, 41 (Am. S.B. 18, eff. Aug. 1, 1975)) stated in pertinent part:

> Each full-time employee in the several offices and departments of the county service, including full-time hourly-rate employees, after service of one year with the county or any political subdivision of the state, 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 full pay....Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours

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[1] This opinion will be limited to a discussion of the operation of R.C. 325.19 only and will not address situations where the provisions of the statute have been varied pursuant to a collective bargaining agreement governing the compensation of county employees, see generally 1985 Op. Att'y Gen. No. 85-102, note 1, or where the appointing authority has varied the vacation benefits for his employees pursuant to his power to compensate, see generally Cataland v. Cahill, 13 Ohio App. 3d 113, 114, 468 N.E.2d 388, 390 (Franklin County 1984) ("[s]ick leave and vacation leave prescribed by statute are minimums only and, where the appointing authority is authorized to establish compensation of employees, either sick-leave or vacation-leave benefits in addition to the minimums prescribed by statute may be granted as part of compensation").

> each biweekly period for those entitled to eighty hours per year....

At that time, R.C. 325.19 contained no definition of the term "full-time employee."

Since the intention of the legislature in amending R.C. 325.19 in Am. S.B. 18, was "to put county employees on an equal footing with state employees with respect to vacation leave," Op. No. 77-007 at 2-26, the opinion examined the operation of R.C. 121.161[2] (currently at R.C. 124.13), governing state employees' vacation leave. Pursuant to R.C. 121.161, full-time state employees accrued vacation leave in the same manner as did county employees, at a certain number of hours per biweekly period. Although neither R.C. 325.19 nor R.C. 121.161 defined the term "full-time" as used in those statutes, the state did have a statutorily prescribed standard workweek of forty hours, R.C. 124.18, while, at the county level, each appointing authority prescribed the standard workweek for his employees. The opinion then reasoned that in order for a state employee to receive vacation leave, he had to be a full-time employee working a standard workweek of forty hours. Thus, a county employee whose standard workweek was less than forty hours, although considered as full time by his appointing authority, was entitled to vacation benefits only in an amount adjusted to reflect the lesser number of hours in his workweek as compared to that of a state employee. Such adjustment kept county employees' vacation benefits equivalent to those of state employees.

As discussed in 1982 Op. Att'y Gen. No. 82-055, note 1, however, the legislature again amended R.C. 325.19 in 1979-1980 Ohio Laws, Part I, 2542 (Am. H.B. 333, eff. May 13, 1980) to include a definition of a full-time employee as, "an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service." R.C. 325.19(G)(1). Based upon this amendment, Op. No. 82-055 overruled Op. No. 77-007. Although Op. No. 77-007 was overruled in Op. No. 82-055, the precise issue addressed in the former opinion was not directly considered again until 1985 Op. Att'y Gen. No. 85-102, the syllabus of which states: "A county employee who works a

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[2] R.C. 121.161 (1973 Ohio Laws, Part I, 83 (Am. Sub. S.B. 31, eff. Aug. 1, 1973)) read in pertinent part:

> Each full-time state employee, including full-time hourly-rate employees, after service of one year with the state, or any political subdivision of the state, 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 full pay. One year of service shall be computed on the basis of twenty-six biweekly pay periods....Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period for those entitled to eighty hours per year.... (Emphasis added.)

R.C. 121.161 contained no definition of the term "full-time state employee."

standard workweek set as full time by his appointing authority at less than forty hours per week is a full-time employee for purposes of R.C. 325.19, and is entitled to the full amount of vacation leave prescribed by R.C. 325.19(A)."

In light of this background your first question asks: "From what date are full time county employees working less than forty hours per week entitled to the statutory accrual rate as set forth in 1985 O.A.G. 85-102, rather than the reduced rate set forth in 1977 O.A.G. No. 77-007?" The basis for overruling Op. No. 77-007 is the amendment of R.C. 325.19 in Am. H.B. 333, which added the definition of a "full-time employee," as including one who works forty hours per week, as well as one "who renders any other standard of service accepted as full-time by an office, department, or agency of county service," R.C. 325.19(G)(1). As a general rule, the provisions of a statute become operative upon the effective date of the act enacting or amending the statute. See Patterson Foundry & Machine Co. v. Ohio River Power Co., 99 Ohio St. 429, 436, 124 N.E. 241, 243 (1919) ("[i]t is well settled that where a time in the future is stated in an act when it shall take effect and be in force it has effect and speaks only from that time. But that rule applies only where a contrary intention is not manifested in the act itself").

By way of illustration, I note that a similar question was addressed in State ex rel. Sweeney v. Donahue, 12 Ohio St. 2d 84, 232 N.E.2d 398 (1967). The plaintiff in that action had been a state employee from January 16, 1935, until November 30, 1965, during which period he used little of the vacation leave to which he was entitled under R.C. 121.161 (now R.C. 124.13) and its antecedents. Upon terminating his employment, plaintiff sought payment for the vacation leave he claimed to have accumulated during the course of his employment with the state. The employer, however, denied payment for, among others, any hours claimed to have been accumulated prior to the amendment of R.C. 121.161 in 1959 Ohio Laws 627 (Am. Sub. H.B. 208, eff. Nov. 4, 1959), such amendment establishing for the first time the right to receive payment upon separation for unused vacation leave accumulated under that statute. Plaintiff instituted a mandamus action in the court of appeals to compel payment for his unused vacation benefits. The court of appeals ordered payment for all unused vacation leave acquired after the amendment of R.C. 121.161, effective November 4, 1959, but denied recovery for any vacation leave acquired before this amendment, finding such leave to have been waived to the extent it was not used during the year acquired. On appeal to the Supreme Court the sole question presented was whether the employee was entitled to compensation for unused vaction leave acquired before the effective date of the amendment of R.C. 121.161 in Am. Sub. H.B. 208. The court denied payment for any benefits acquired prior to November 4, 1959, stating:

> Any changes made by the amendment of November 4, 1959, are irrelevant to this appeal, because even if we assume that this amendment did make vacation leave a deferable right convertible into money there is still no indication from the amendment...that its policy was to be retroactive....
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> We find that in none of the versions of the vacation-leave statute having effect over the period from January 16, 1935 [the plaintiff's starting date as a state employee], until November 4, 1959, does the right to vacation leave with pay survive the year in which it arises.

12 Ohio St. 2d at 86-87; 232 N.E.2d at 399-400. Thus, the effective date of the act amending R.C. 121.161 to grant state employees the right to payment upon separation for unused vacation benefits is the date as of which the right to receive such benefit commenced. In the situation you present, therefore, the effective date of the amendment to R.C. 325.19 in Am. H.B. 333, May 13, 1980, is the date upon which full-time county employees, as defined in Am. H.B. 333, became entitled to accrue vacation benefits at the full rate described in Op. No. 85-102, rather than at the adjusted rate described in Op. No. 77-007.

I have restated your last question as follows: If a county employee has not been credited with the full amount of vacation leave to which he was entitled due to the county's following the procedure described in 1977 Op. Att'y Gen. No. 77-007, may the appointing authority credit such an employee with the additional vacation benefits to which such employee was entitled? You ask about the power of county appointing authorities generally. I will, therefore, address your question in general terms, since it would be unnecessarily burdensome and repetitious to address the statutes governing the appointment of employees within each county office.

County appointing authorities are, as a general rule, creatures of statute, and, thus, have only those powers and duties imposed by statute or necessarily implied therefrom. See generally State ex rel. Hoel v. Goubeaux, 110 Ohio St. 287, 288, 144 N.E. 251, 252 (1924) ("the creation of county officers is a legislative act; conferring power upon them is also a legislative act. They have no powers as officers save and except such as are clearly conferred by statute"); 1986 Op. Att'y Gen. No. 86-024 at 2-126 ("[i]t is axiomatic that each county officer, employee, agent, board, or commission has such powers as are granted, expressly or through necessary implication, by provisions of statute"). It is, therefore, necessary to determine whether county appointing authorities possess the requisite statutory authority to make the type of adjustment to their employees' payroll records as described in your letter.

A similar question was addressed in 1982 Op. Att'y Gen. No. 82-073 concerning state employees who had not been credited with the full amount of vacation leave to which they were entitled under R.C. 121.161 (now at R.C. 124.13). The specific question addressed in Op. No. 82-073 is whether the Department of Administrative Services could credit certain state employees with previously earned, but uncredited, vacation benefits. Op. No. 82-073 states at 2-205: "It is clear...that where a state employee has not received vacation benefits as prescribed by R.C. 121.161, the appointing authority must credit him with such benefits." (Footnote omitted; emphasis added.)

Op. No. 82-073 then discusses the functions of the Department of Administrative Services with regard to the preparation of payroll journals and vouchers for the payment of state employees' compensation. At the state level, the Director of Administrative Services, rather than each appointing authority, must "furnish to the auditor of state all necessary data for drawing state...employee pay warrants and preparing earning statements," R.C. 125.21. The opinion then concludes that necessarily included within such duties of the Director is the implied power to take any reasonable and necessary steps to correct the records which he has a duty to maintain.

At the county level, it is generally the appointing authority which submits a voucher to the county auditor for payment of that appointing authority's employees. See generally R.C. 319.16 (stating in part, "[t]he county auditor shall issue warrants on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher 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" (emphasis added)); Op. No. 86-024 at 2-126 ("[i]n instances in which a person or entity other than the board of county commissioners is authorized to fix the amount of a claim, that person or entity may fix the amount and allow the payment without obtaining the concurrence of the board of county commissioners;" citing, as an example, R.C. 325.17 (authorizing certain officers to fix employees' compensation, which compensation "shall be paid biweekly from the county treasury, upon the warrant of the auditor")). Since, as a general rule, it is the individual appointing authority who determines his employees' compensation and allows for the payment of such compensation, the appointing authority must keep accurate records of the compensation his employees are to receive. Cf. 1981 Op. Att'y Gen. No. 81-006 (payroll records are clearly necessary in order for a township to execute its responsibilities in connection with compensating its employees). In order to submit a voucher for the payroll of his employees, each appointing authority must maintain information necessary for the accurate payment of compensation, including vacation benefits, of his employees. Based upon the reasoning in Op. No. 82-073, I conclude that where a county appointing authority has credited his employees with less than the full amount of vacation benefits to which they are entitled, he has the implied authority to correct his records to reflect the full amount of vacation benefits to which his employees are entitled. See generally 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...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").

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

1. As of May 13, 1980, the effective date of Am. H.B. 333 (1979-1980 Ohio Laws, Part I, 2542), a county employee working less than forty hours per week but rendering service considered as full time by the office, department or agency of county service in which he was employed became entitled to the full amount of vacation leave prescribed by R.C. 325.19(A).

2. A county appointing authority who has not credited his full-time employees, as defined in R.C. 325.19(G)(1), with the entire amount of vacation leave to which they became entitled upon the amendment of R.C. 325.19 in 1979-1980 Ohio Laws, Part I, 2542 (Am. H.B. 333, eff. May 13, 1980) has the implied authority to correct his payroll records to reflect the full amount of vacation benefits to which such employees have been entitled.