

Note from the Attorney General's Office:

1977 Op. Att'y Gen. No. 77-007 was overruled by
1982 Op. Att'y Gen. No. 82-055.

OPINION NO. 77-007**Syllabus:**

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. 1976 Op. Att'y Gen. No. 76-001 clarified.

To: William B. Stapleton, Brown County Pros. Atty., Georgetown, Ohio
By: William J. Brown, Attorney General, February 25, 1977

You have requested my opinion concerning the calculation of vacation time for county employees pursuant to R.C. 325.19. Specifically you have raised that question with regard to employees of the county engineer who regularly work less than 40 hours per week.

R.C. 325.19 reads 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 . . . 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 3.1 hours for each biweekly period for those entitled to 80 hours per year. . . ."

It may initially be noted that the above language is virtually identical to that of R.C. 121.16 which provides vacation benefits for state employees. In fact, the recent amendment of R.C. 325.19 by Am. S.B. No. 408, effective 7/22/74, which changed the language of that section to match generally that of R.C. 121.16, was for the stated purpose of "equalizing vacations for county employees with those of state employees." On this point see also 1974 Op. Att'y Gen. No. 74-085.

It is significant then that R.C. 124.18 establishes a standard work week of forty hours for all state employees. That section reads in pertinent part:

"Forty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state."

Given this background, it appears that the General Assembly, in providing state employees pursuant to R.C. 121.16 with eighty hours of vacation upon the completion of one year of service, has in fact intended to authorize two weeks of vacation based on a full time work week of forty hours. It follows that county employees under R.C. 325.19 would be entitled to comparable vacation benefits.

As discussed in 1975 Op. Att'y Gen. No. 75-078, however, county officers, as the appointing authorities for the various county employees, exercise broad discretion in establishing the standard work week for their employees. In establishing a standard work week the county officer in effect determines what constitutes full-time status for his employees. To this extent county employees are subject to a different test for full-time status and eligibility for vacation leave than state employees.

It is clear that R.C. 325.19 guarantees eighty hours of vacation to county employees working a forty hour work week upon completion of one year of service. The question remains, however, as to the calculation of leave when the standard work week is less than forty hours. The General Assembly has not addressed this issue and the application of R.C. 325.19 to such situations is unclear.

With respect to such ambiguity, R.C. 1.49 sets forth a long settled and now codified rule of statutory construction:

"If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory

provisions, including laws upon the same or similar subjects;

(E) The consequences of a particular construction;

(F) The administrative construction of the statute."

In addition R.C. 1.47 provides:

"In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended;

(B) The entire statute is intended to be effective;

(C) A just and reasonable result is intended;

(D) A result feasible of execution is intended."

As discussed above R.C. 325.19 in its current form is designed to put county employees on an equal footing with state employees with respect to vacation leave. R.C. 121.16 in turn operates to give state employees the equivalent of two weeks vacation per year upon the completion of one year of service. In 1976 Op. Att'y Gen. No. 76-001, I considered the calculation of vacation leave for county employees who work a standard work day of more than 8 hours. In that opinion I observed that R.C. 325.19 provides for accrual of vacation leave on the basis of pay periods. To this end the section states that such leave "shall accrue to the employees at the rate of 3.1 hours for each biweekly period for those entitled to 80 hours per year. . ." The use of this language is apparently designed then to clarify the pro-rata accrual of vacation leave on a bi-weekly basis.

In view of the above discussed purpose of R.C. 325.19, however, I am of the opinion that the General Assembly has authorized the payment of vacation leave to full-time county employees, even though "full-time" is less than forty hours per week as a result of a determination of the appointing authority to establish a shorter standard work week. To conclude otherwise would permit a county officer to frustrate the legislative intent underlying R.C. 325.19 and deny vacation benefits to otherwise qualified employees by simply establishing a shorter standard work week. Such a result would be inconsistent with the rules set out in R.C. Section 1.47 and 1.49.

At the same time these rules of statutory construction require that the number of hours of vacation leave accrued bi-weekly be adjusted proportionately to reflect differences in employees' standard work weeks. Since R.C. 121.16 and 124.18 by their terms operate to grant two weeks annual vacation leave to state employees with one year of service, R.C. 325.19, in providing county employees with comparable benefits, must be construed so as to authorize adjustments of vacation accrued to reflect differences in standard work weeks.

While the foregoing sets out the rule to be applied in determining eligibility for and amount of vacation leave for employees working less than forty hours per week, such a situation must be distinguished from that of employers with a standard work week of more than forty hours. As discussed in Op. No. 75-078, supra, R.C. 4111.03 requires the payment of overtime to employees working more than forty hours per week. The General Assembly, therefore, has in effect established forty hours as a maximum for a full-time work week without the payment of overtime. In view of this guarantee of overtime pay for hours worked in excess of forty hours, it appears that the General Assembly did not intend to authorize the award of more than forty hours of vacation leave for each week of vacation to which an employee is entitled.

In specific answer to your question, it is my opinion and you are so advised 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. 1976 Op. Att'y Gen. No. 76-001 clarified.