

**OPINION NO. 81-073****Syllabus:**

A duly elected county engineer may not be considered an employee of his office and, therefore, is not entitled to participate in programs established pursuant to R.C. 325.191 (programs for staff development and continuing education).

**To: R. David Picken, Madison County Pros. Atty., London, Ohio**  
**By: William J. Brown, Attorney General, November 25, 1981**

I have before me your request for my opinion which asks whether a duly elected county engineer may be considered an employee for purposes of enjoying the benefits of R.C. 325.191 (programs for staff development and continuing education). Your second question asks, "if the elected employee is entitled to participate, is that party's participation to be considered an [in-term] increase in salary, where the number of courses to be taken, or expense thereof, are not established prior to that individual [office] holder beginning his or her term in office?"

R.C. 325.191, to which your letter refers, addresses county staff development and continuing education programs, and specifically permits a board of county commissioners to authorize offices of the county to establish programs for staff development and continuing education for employees of such offices. R.C. 325.191 states:

(A) The board of county commissioners, by an affirmative vote of at least two members, may authorize each of the several offices, departments, and agencies of the county service to establish programs for staff development and continuing education, to assist employees to more adequately and effectively carry out current job assignments and to prepare for promotional advancements. Each full-time employee in an office, department, or agency adopting such a program shall be entitled to participate pursuant to the rules established by the office, department, or agency for administration of the program.

(B) Expenditures on behalf of staff development and continuing education shall only be made to further the interests of the participating office, department, or agency of the county. Any plan adopted pursuant to this section may include programs for employee orientation, on-the-job training, tuition reimbursement, educational material reimbursement, and educational leaves of absence, and may include the expenditure of training funds for special teachers, consultants and educational facilities necessary to implement the program. (Emphasis added.)

The first issue for my consideration is whether the duly elected position of county engineer constitutes an office of the county which may establish staff development and continuing education programs under R.C. 325.191.

Pursuant to R.C. 315.01, it is clear that the position of county engineer constitutes an office of the county, and, therefore, is within the provisions of R.C. 325.191. R.C. 315.01 states: "There shall be elected quadrennially in each county a county engineer who shall assume office on the first Monday in January next after his election and shall hold such office for four years." (Emphasis added.) See 1959 Op. Att'y Gen. No. 855, p. 557 at 558 ("county engineer is an officer of the county"). It follows, therefore, from the plain language of R.C. 325.191 ("each of the several offices. . .of the county service") that the office of county engineer may establish programs for staff development and continuing education.

In order to be entitled to participate in staff development and continuing education programs established pursuant to R.C. 325.191, a person must, by the express language of R.C. 325.191, be an employee of the office that has established such programs. The next question for my consideration, therefore, is whether the county engineer, who is a public officer, may, at the same time, be considered an employee of the office of county engineer. See State ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968) (county engineer is a public officer for purposes of Ohio Const. art. II, §20).

After a close examination of the relevant statutory provisions relating to the office of county engineer, particularly R.C. 325.17 (county officers may appoint and employ persons for their offices), it appears that the county engineer, as an officer of the county, is not an employee of his office. R.C. 325.17 states:

The officers mentioned in section 325.27 of the Revised Code [including the county engineer] may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid biweekly from the county treasury, upon the warrant of the auditor. The amount of biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such employee would receive if he were paid semi-monthly. Each of such officers may require such of his employees as he deems proper to give bond to the state, in an amount to be fixed by such officer, with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond, with the approval of such officer endorsed thereon, shall be deposited with the county treasurer and kept in his office.

From moneys appropriated for their offices, the officers mentioned in section 325.27 of the Revised Code may contract for the services of fiscal and management consultants to aid them in the execution of their powers and duties. (Emphasis added.)

Based upon the language of R.C. 325.17 ("[t]he officers. . .may appoint and employ. . .the necessary. . .employees for their respective offices"), it appears that a county engineer is not considered an employee of his office, but rather, the employer. That a county engineer is the employer and not an employee of his office was made plain by one of my predecessors in 1939 Op. Att'y Gen. No. 1572, vol. III, p. 2334 at 2335-36, where he stated, in part: "The county engineer himself is the employer. The [employees] are those selected by him. They serve at his pleasure subject to dismissal without cause unless in the classified service." (Emphasis added.)

From a reading of R.C. 325.17 and 1939 Op. No. 1572, I conclude that a county engineer may not be considered an employee of his office and, therefore, is not entitled to participate in programs established pursuant to R.C. 325.191.

Officers, such as county engineers, are not mentioned within the language of R.C. 325.191. R.C. 325.191 is plain and unambiguous regarding who "shall be entitled" to such benefits, stating expressly that "employees" are so entitled. Where a statute is plain and unambiguous, as in this instance, I am without recourse to rules of statutory construction. See State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 159 N.E. 823 (1927) (a plain and unambiguous statute leaves no occasion to resort to statutory construction).

Because I have concluded that a county engineer is not an employee for purposes of R.C. 325.191 and, therefore, is not entitled to participate in programs established pursuant to that section, I find it unnecessary to address your second question.

For the foregoing reasons, it is my opinion, and you are so advised, that a duly elected county engineer may not be considered an employee of his office and, therefore, is not entitled to participate in programs established pursuant to R.C. 325.191 (programs for staff development and continuing education).