OPINION NO. 90-110

Syllabus:

1. Pursuant to R.C. 1901.12(A), a municipal court judge is entitled to receive thirty days of vacation leave in each calendar year.

2. A municipal court judge is neither entitled to, nor limited to, a specific sick leave or holiday leave benefit.

3. A municipal court employee is entitled to receive sick leave benefits as fixed by his compensating authority, subject to the statutory minimum prescribed by R.C. 124.38(A).

4. The various compensating authorities within a municipal court may prescribe vacation leave and holiday benefits as part of the compensation of the employees whose compensation they fix; such compensating authorities are given discretion to determine, upon examination of the operation of the municipal court served by such employees, whether its employees are county employees for purposes of the minimum vacation and holiday benefits prescribed by R.C. 325.19.

5. Municipalities among which the costs of a municipal court are apportioned under R.C. 1901.026 may enter into agreements to apportion that part of the court's operating costs attributable to employee compensation, so long as such agreements are consistent with the scheme for apportionment prescribed by that statute.

6. A municipal court judge may participate in the deferred compensation program established under R.C. 145.74 by the county from whose treasury a portion of his salary is paid, but only with respect to that portion of his salary paid by that county.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1990

I have before me your opinion request concerning compensation for municipal court judges and other court personnel. You specifically ask:

> 1. Since Section 1901.11, Revised Code, provides for partial payment from the county treasury, should the judges and other employees that fail under the statute be considered county employees?
>
> 2. If the answer is no, would separate agreements, between the municipal legislative authorities and county commissioners, be appropriate for authorizing compensation in the form of reimbursement?
>
> 3. Are municipal judges entitled to participate in the county's deferred compensation plan and entitled to contribute to P.E.R.S. while having the county pay its proportionate share?
>
> 4. Should municipal judges and other employees be considered as working for the court, the city, or the county for the purposes of the following benefits: sick leave, vacation, holidays, and any other available fringe benefits?

After discussions between members of our staffs regarding the underlying issues, it is apparent that your primary concern is the proper means of categorizing municipal court judges and employees in geographical terms, for purposes of determining the various forms of compensation payable to such persons. I will, therefore, address your first and fourth questions together.

Turning first to municipal court judges and the benefits to which they are entitled, I note that Ohio Const. art. IV, §6(B) governs the compensation of municipal court judges. Ohio Const. art. IV, §6(B) states in part:

> The judges of...all courts of record established by law, shall, at stated times, receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office....[J]udges of all courts of record established by law shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites....

Since municipal courts are established as courts of record, R.C. 1901.02(A),

municipal court judges are prohibited by art. IV, §6(B) from the receipt of fees or perquisites apart from their compensation set by law. 1986 Op. Att'y Gen. No. 86-025; 1983 Op. Att'y Gen. No. 83-042. The compensation to which municipal court judges are entitled is set forth in R.C. 1901.11, including, for certain such judges, the amount prescribed by R.C. 141.04.

You specifically question the amount of vacation leave, sick leave, and holiday leave to which municipal court judges are entitled. The time which a municipal court judge must devote to his duties is governed by R.C. 1901.12, which states in part:

> (A) *A municipal judge is entitled to thirty days of vacation in each calendar year.* Not less than two hundred forty days of open session of the municipal court shall be held by each judge during the year, unless all business of the court is disposed of sooner.
>
> (B) When a court consists of a single judge, a qualified substitute may be appointed in accordance with [R.C. 1901.10(A)(2)] to serve during the thirty-day vacation period....If a court consists of two judges, one of the judges shall be in attendance at the court at all times, and the presiding judge shall have the authority to designate the vacation period for each judge, and when necessary, to appoint a substitute for the judge when on vacation or not in attendance. If a court consists of more than two judges, two-thirds of the court shall be in attendance at all times, and the presiding judge shall have authority to designate the vacation period of each judge, and, when necessary, to appoint a substitute for any judge on vacation or not in attendance. (Emphasis added.)

Thus, pursuant to R.C. 1901.12(A), the legislature has expressly authorized municipal court judges to receive thirty days of vacation in each calendar year.

No statute of which I am aware, however, addresses the sick leave or holiday leave to which municipal court judges are entitled. In the absence of any specific amount of such leave having been prescribed by the General Assembly, it appears that municipal court judges, as public officers, *see* R.C. 1901.06, are to be treated as are other public officers with respect to the time which they must devote to performing their duties. As I recently explained in 1990 Op. Att'y Gen. No. 90-014 at 2-57:

> The traditional definition of "officer" carries with it the concept that the officer is duty-bound to devote the time necessary to discharge the duties of his office, whether that requires more or less than a standard forty-hour workweek, but that he is not otherwise restricted to a particular work schedule. *See* 1980 Op. Att'y Gen. No. 80-065; 1963 Op. No. 3548. *Absent statutory provisions to the contrary,* the right of an officer to compensation is attached to the office itself, as an incident of title to the office, and is not dependent upon the performance of the duties of the office. *See State ex rel. Wilcox v. Woldman*, 157 Ohio St. 264, 105 N.E.2d 44 (1952); *State ex rel. Clinger v. White*, 143 Ohio St. 175, 54 N.E.2d 308 (1944)....
>
> An officer is not required to devote particular hours to his duties. He may, instead, schedule his work as he finds necessary to fulfill his responsibilities. In the performance of his duties, an officer will frequently work more than a standard forty-hour workweek. He is, correspondingly, permitted to be absent during what would be considered normal business hours for such reasons as illness or personal business. (Emphasis added.)

Thus, in the absence of statute, a municipal court judge is neither entitled to, nor limited to, a specific sick leave or holiday leave benefit.

The second portion of your question concerns the vacation, sick leave, and holiday benefits to which municipal court employees are entitled.[1] In order to answer this portion of your question, it is first necessary to discuss the creation and operation of municipal courts. Pursuant to Ohio Const. art. IV, §1, the legislature possesses the exclusive power to create courts inferior to the courts of appeals. *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929) (syllabus, paragraph three). The General Assembly has, therefore, established a detailed system of municipal courts throughout the state. *Miller v. Eagle*, 96 Ohio St. 106, 117 N.E. 23 (1917).

The historical development of the municipal courts throughout the state was explained in *Miller v. Eagle*, 96 Ohio St. at 112–13, 117 N.E. at 25, where the court specifically addressed the power of the legislature in regard to the establishment of the Dayton Municipal Court, as follows:

> Section 1, Article IV of the Constitution, authorizing the establishment by the general assembly of inferior courts, was a special grant of legislative power upon a particular subject, which itself prescribed the rule for the government of the legislative body in the exercise of that power. As was said in [*State ex rel. Attorney General v. Bloch*, 65 Ohio St. 370, 62 N.E. 441 (1901)], the general assembly is vested with full power to determine what courts inferior to the court of appeals it will establish, local if deemed proper, either for separate counties or cities, and to define their jurisdiction and power, and in the enactment of laws relating thereto is not subject to the limitation imposed upon the legislative power in requiring all laws of a general nature to have uniform operation throughout the state....
>
> The general assembly established a municipal court for the city of Dayton and defined its jurisdiction and power. It is a local court established to meet the needs and conditions of that city. The law establishing this court and defining its jurisdiction and power is designedly and authoritatively local in its operation, and the question of the uniformity of its operation throughout the state cannot arise....The fact that its provisions are local in their operation does not invalidate the section, as the law was enacted under a special grant of legislative power and may stand against the provisions of Section 26, Article II of the Constitution, requiring uniformity in operation throughout the state of laws of a general nature. (Citations omitted.)

The purpose of allowing the General Assembly to create such courts without the requirement of uniformity was explained in the *Bloch* case, as follows:

> Apparently there could have been but one purpose in making this special grant of legislative power, and that was to enable the general assembly to meet the public needs for additional courts, as they might arise in different parts of the state. It is hardly probable that it was considered or contemplated that the same necessities in that respect would arise at the same time in all parts of the state. Hence, the power was given to establish these additional courts from time to time, as in the opinion of the legislative body the public exigencies should appear to render necessary or proper.

65 Ohio St. at 391–92, 62 N.E. at 443. The authority of the General Assembly to provide similarly for the personnel and employees of municipal courts has also been

---

[1] Since your question relates to only municipal court judges and employees, my discussion will be so limited. *See generally State ex rel. Edgecomb v. Rosen*, 29 Ohio St. 2d 114, 279 N.E.2d 870 (1972) (finding an elected municipal court clerk to be an "officer" for purposes of Ohio Const. art. II, §20). *Rosen* was overruled on other grounds by *Schultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983).

recognized. *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 222 N.E.2d 798 (Stark County 1966); *Ellis v. Urner*, 41 Ohio App. 183, 180 N.E. 661 (Hamilton County 1931), *aff'd*, 125 Ohio St. 246, 181 N.E. 22 (1932). *See Dugan v. Civil Service Commission*, 9 Ohio App. 3d 218, 459 N.E.2d 618 (Summit County 1983). *See generally* 1952 Op. Att'y Gen. No. 2183, p. 785 (discussing the historical development of the state's municipal courts through separate enactments prior to adoption of the Uniform Municipal Court Act, 1951 Ohio Laws 589 (Am. S.B. 14, filed June 14, 1951)).

The legislature in 1951 consolidated the numerous statutory provisions concerning the various municipal courts within R.C. Chapter 1901 which establishes certain characteristics common among municipal courts. *See, e.g.*, R.C. 1901.02(A) (municipal courts established by R.C. 1901.01 "have jurisdiction within the corporate limits of their respective municipal corporations and are courts of record"). Significant differences, however, remain in the municipal courts throughout the state. For example, R.C. 1901.02(B) gives certain municipal courts territorial jurisdiction beyond the municipality in which the court is located, some having jurisdiction within an entire county, some with jurisdiction in portions of more than one county, others with jurisdictions covering a variety of combinations of municipalities and townships within a single county.

Another significant difference among the various municipal courts is the way in which the operating costs of the courts are provided. For example, pursuant to R.C. 1901.024(A), the board of county commissioners of Hamilton County pays all of the costs of operation of the Hamilton County Municipal Court. Further, R.C. 1901.024(D) states, in pertinent part: "The board of county commissioners of a county in which a county-operated municipal court[2] is located shall pay all of the costs of operation of the municipal court." (Footnote added.) The remainder of the municipal courts are funded as provided in R.C. 1901.026, which states in part:

> (A) *The current operating costs of a municipal court, other than a county-operated municipal court, that has territorial jurisdiction under section 1901.02 of the Revised Code that extends beyond the corporate limits of the municipal corporation in which the court is located shall be apportioned pursuant to this section among all of the municipal corporations that are within the territory of the court.* Each municipal corporation within the territory of the municipal court shall be assigned a proportionate share of the operating costs of the municipal court that is equal to the percentage of the total criminal and civil caseload of the municipal court that arose in that municipal corporation. Each municipal corporation then shall be liable for its assigned proportionate share of the current operating costs of the court, subject to division (B) of this section.
>
> ....
>
> (D) For purposes of this section, "operating costs" means the figure that is derived by subtracting the total of all costs that are collected and paid to the city treasury by the clerk of the municipal court pursuant to division (F) of section 1901.31 of the Revised Code and all interest received and paid to the city treasury in relation to the costs pursuant to division (G) of section 1901.31 of the Revised Code from the total of the amounts payable from the city treasury for the operation of the court pursuant to sections 1901.10, 1901.11 [compensation of judges], 1901.12, 1901.31 [clerks and deputy clerks], 1901.311 [special deputy clerks], 1901.32 [bailiffs and deputy bailiffs], 1901.33, 1901.36 [accommodations and needs of court], and 1901.37 of

---

[2] For purposes of R.C. Chapter 1901, R.C. 1901.03(F) defines a "county-operated municipal court" as meaning, "the Auglaize county, Crawford county, Hamilton county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Portage county, . . . Wayne county municipal court."

> the Revised Code, other than any amounts payable from the city treasury for the operation of the court involving construction, capital improvements, rent, or the provision of heat and light. (Emphasis added.)

Thus, included in the term operating costs is the cost of compensating various court personnel. For certain municipal courts such costs are borne solely by the board of county commissioners of the county in which the court is located. R.C. 1901.024. In other municipal courts, however, such costs are apportioned in the manner prescribed by R.C. 1901.026 among the municipalities within the court's jurisdiction. The General Assembly has not, therefore, established a uniform method governing the payment of operating costs, including the compensation of court personnel, for all municipal courts within the state.

The foregoing differences among the municipal courts throughout the state are significant in that the territorial jurisdiction of the public entity and the source of compensation of the entity's officers and employees are two common means of determining the nature of the public service rendered by such personnel. *See State ex rel. Pogue v. Groom*, 91 Ohio St. 1, 9, 109 N.E. 477, 479 (1914) ("[t]he character of a public office is determined by the nature of the public service to be performed in connection with the territorial limits of the authority to act in an official capacity"); *State ex rel. v. Brennan*, 49 Ohio St. 33, 38-39, 29 N.E. 593, 594 (1892) (in determining that a particular public office was a county office, the court stated: "where such duties are wholly performed within the limits of a county, and for the people of that county, the salary to be paid by the disbursing officer of the county, from the funds of the county, the office is a county office").

It is readily apparent, however, that the traditional means of determining the nature of a public position do not apply in examining the nature of the service of municipal court personnel. In this regard, I note that not all municipal courts with county-wide jurisdiction are considered to be "county-operated" courts for purposes of R.C. 1901.024, requiring the county to pay all of the costs of the operation of such a court. *See, e.g.*, Hardin county municipal court. Conversely, the Lawrence county municipal court has jurisdiction within only a portion of the county and yet, is considered to be a "county-operated" court for purposes of R.C. 1901.024. R.C. 1901.03(F). Further, pursuant to R.C. 1901.02, the Miami county municipal court has jurisdiction "within Miami county and within the part of the municipal corporation of Bradford that is located in Darke county"; such court is, however, defined in R.C. 1901.03(F) as a "county-operated municipal court." Thus, the territorial jurisdiction of a municipal court bears no discernible relationship to the source of funding for each such court.

Further uncertainty as to the nature of service rendered by municipal court personnel is found in the context of R.C. Chapter 124 governing the civil service system. R.C. 124.01(A) defines "civil service," as used in R.C. Chapter 124, as including "all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof." As I concluded in 1989 Op. Att'y Gen. No. 89-063 at 2-280: "employment positions which are not in the service of the state or county or one of the other named political subdivisions are not included in the civil service."

The civil service is further divided into the classified and unclassified service by R.C. 124.11, which states in part:

> The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.
>
> (A) The unclassified service shall comprise the following positions, which shall not be included in the classified service...:
>
> (1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;

> ...
> (8) ...two secretaries, assistants, or clerks and one personal stenographer for...elective officers [other than elective state officers]...;
> ...
> (10) Bailiffs, constables, official stenographers, and commissioners of courts of record,...and such officers and employees of courts of record...as the director of administrative services finds it impracticable to determine their fitness by competitive examination;
> ....
> (B) The 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 thereof, not specifically included in the unclassified service.

Pursuant to R.C. 1901.07(A), "[a]ll municipal court judges shall be elected on the nonpartisan ballot for terms of six years." Further, pursuant to R.C. 1901.10(A)(1), municipal court judges are considered officers. Thus, municipal court judges appear to come within the unclassified service pursuant to R.C. 124.11(A)(1). With respect to other municipal court personnel, I note that R.C. 1901.02(A) makes the municipal courts established by R.C. 1901.01 courts of record. Thus, municipal court employees may be included within the unclassified service under R.C. 124.11(A)(10). Additionally, since municipal court judges are elective officers, certain of their employees may be included in the unclassified service pursuant to R.C. 124.11(A)(8). The inclusion of municipal court judges and employees within the civil service system exhibits the legislature's intent that municipal court personnel are, at least for purposes of R.C. Chapter 124, in the service of one of the entities specified in R.C. 124.01(A).

It appears, however, that municipal courts have no universal identity within R.C. Chapter 124 as entities of the state or one of the other subdivisions listed in R.C. 124.01(A). For example, specific provision is made in R.C. 1901.32(B) for placement of personnel of the Cleveland Municipal Court in the civil service of the city of Cleveland. *See generally Engel v. Corrigan*, 12 Ohio App. 3d 34, 465 N.E.2d 932 (Cuyahoga County 1983). In contrast to the *Engel* decision, the court in *Dugan v. Civil Service Commission, supra*, found that deputy clerks of the Akron Municipal Court are not within the jurisdiction of the Akron Civil Service Commission. After noting the fact that municipal court employees are encompassed within the civil service system, governed by R.C. Chapter 124, the court noted that the Akron Municipal Court has territorial jurisdiction beyond the City of Akron. In discussing the hiring of deputy clerks for the Akron Municipal Court, the court stated:

> The Clerk of the Akron Municipal Court is nominated and elected by the qualified electors of the entire territory. R.C. 1901.31(A)(1). The clerk appoints deputy clerks and determines their salaries. R.C. 1901.31(H). While the deputy clerks' salaries are paid from the city treasury, each municipality within the territorial jurisdiction of the court contributes to the defrayment of the court's operating costs. R.C. 1901.026. The city merely serves as a conduit for funds from all the municipalities within the court's territorial jurisdiction to court personnel.

9 Ohio App. 3d at 218, 459 N.E.2d at 619. The court, thus, appears to have concluded that although the Akron Municipal Court's employees are paid from the Akron city treasury, the city serves merely as a conduit for funds derived from all the municipalities that participate in the payment of the court's operating costs.

Turning then to the specific provisions governing the city's civil service system and the statutory provisions governing employees of the Akron Municipal Court, the court in *Dugan* stated:

> The Charter of the city of Akron as well as the Rules of the Civil Service Commission limit the commission's jurisdiction to those

> persons appointed to the classified service of the city. "Appointing authority" is defined by the rules of the civil service commission as:
>
> "***[A] person, Board, or Commission, having the authority to make appointments to positions in the classified Service of the City as prescribed in the City Charter."
>
> Because deputy clerks are appointed by the clerk pursuant to R.C. 1901.31(H), they do not fall within the stated jurisdiction of the commission.
>
> Article IV of the Constitution of the state of Ohio which establishes the Supreme Court, the Courts of Appeals and the Courts of Common Pleas, also grants to the state legislature the exclusive power to establish other courts inferior to the Supreme Court. That power to establish carries with it the authority to administer those courts, including the right to provide for the appointment, status, tenure and discharge of court employees. Thus, without some state legislative enactment broadening the Akron commission's power, deputy clerks do not come within its jurisdiction. (Citations omitted.)

9 Ohio App. 3d at 218–19, 459 N.E.2d at 619.

The court in *Dugan* then specifically contrasted the statutory provisions governing the Akron Municipal Court with those governing the Cleveland Municipal Court, stating:

> The Cleveland Municipal Court has jurisdiction within the municipal corporation of Bratenahl as well as the city of Cleveland. The jurisdiction of the Civil Service Commission of the city of Cleveland would normally be limited to city of Cleveland employees. However, the General Assembly has specifically decreed that clerks and deputy clerks of the Cleveland Municipal Court shall be within the Cleveland commission's purview. Since the General Assembly has not so broadened the jurisdiction of the Civil Service Commission of the city of Akron, we must presume no such jurisdiction was intended. *Expressio unius est exclusio alterius.*

9 Ohio App. 3d at 219, 459 N.E.2d at 619–20. Thus, although both the Akron Municipal Court and the Cleveland Municipal Court exercise jurisdiction beyond the territory of the municipalities in which they are located and are funded in the manner set forth in R.C. 1901.026, the employees of the Cleveland Municipal Court are within the jurisdiction of the civil service commission of the City of Cleveland, as expressly provided in R.C. 1901.32(F), while the employees of the Akron Municipal Court do not come within the jurisdiction of the civil service commission of the city of Akron, due to the absence of any statute so providing.

Unlike the employees of the Akron Municipal Court and the Cleveland Municipal Court, the employees of the Hamilton County Municipal Court are provided for in R.C. 1901.32(C), which simply states, "[i]n the Hamilton county municipal court, all employees, including the bailiff, deputy bailiff, and courtroom bailiffs, are in the unclassified civil service," without specifying the entity in whose service such employees are to be included. Pursuant to R.C. 1901.02, the Hamilton County Municipal Court has jurisdiction within the entire county. Further, pursuant to R.C. 1901.024(A), "[t]he board of county commissioners of Hamilton county shall pay all of the costs of operation of the Hamilton county municipal court." The jurisdiction and source of funding of the Hamilton County Municipal Court suggest that it would not be unreasonable to consider that court's personnel to be in the service of the county for purposes of R.C. Chapter 124. *See* 1981 Op. Att'y Gen. No. 81-015 (concerning board of elections employees).

From the foregoing examination of the features of the state system for municipal courts, it is readily apparent that the municipal courts are not susceptible of uniform identification as entities of the state or one of its political subdivisions. This lack of uniformity creates numerous problems in determining the amount and types of compensation provided by statute which may be payable to municipal court personnel. In this regard, I note that the General Assembly has provided by statute

for various types of municipal court personnel and has prescribed the authority empowered to fix their compensation. For example, R.C. 1901.31 governs the selection and compensation of municipal court clerks and deputy clerks. R.C. 1901.311 authorizes the establishment of municipal court branch offices and a special deputy clerk to administer each such office. The compensation of such special deputy clerks is set by "the court" and is payable from the city treasury, or in county-operated municipal courts from the county treasury. R.C. 1901.311. R.C. 1901.32 provides for bailiffs and deputy bailiffs to be appointed either by the court or by the clerk of courts and specifies which entity or person is to set their compensation. R.C. 1901.33 provides for the employment of other types of municipal court personnel by the judge or judges of a municipal court to be compensated as prescribed by the legislative authority, or in a county-operated municipal court by the board of county commissioners. R.C. 1901.331 addresses the appointment and compensation of personnel of the housing division of a municipal court. Finally, there is a general provision in R.C. 1901.36 which states in part:

> The legislative authority shall provide any other employees that are necessary, each of whom shall be paid such compensation out of the city treasury as the legislative authority prescribes, except that the compensation of these other employees in a county-operated municipal court shall be paid out of the treasury of the county in which the court is located as the board of county commissioners prescribes.

These statutes demonstrate that with regard to the compensation of municipal court personnel, there is no single authority within a municipal court that is empowered to prescribe the compensation of all the court's personnel. Further, the entity with authority to fix the compensation for a particular position may vary from court to court. In light of these differences, it is not possible to set forth a general rule concerning the compensation to which municipal court personnel are entitled. Rather, in order to determine the compensation which an individual staff member is entitled to receive, the following fringe benefit analysis must be used for each staff member within each court with regard to each form of compensation in question:

> [T]he authority to provide fringe benefits flows directly from the authority to set compensation and is circumscribed only by apposite statutory authority which either ensures a minimum benefit entitlement or otherwise constricts the employer's authority *vis a vis* a particular fringe benefit....Once the requisite authority to compensate has been established, any statutory provisions pertinent to the provision of the particular fringe benefit in issue by the public employer to its employees must be identified. If the particular fringe benefit is not the subject of any statutory provisions applicable to the public employer or its employees, the fringe benefit in question is a permissible exercise of the public employer's authority to compensate its employees. On the other hand, if the particular fringe benefit is the subject of any statutory provision applicable to the public employer or its employees, further consideration is required. If an applicable statute constitutes a minimum statutory entitlement to a particular benefit, the public employer may, pursuant to its power to compensate and in the absence of any statute constricting its action in the particular case, choose to provide such benefit in excess of the minimum statutory entitlement. If an applicable statute limits the general authority of the public employer to compensate its employees with the particular fringe benefit in question, it must, of course, be viewed as a restriction upon the employer's authority to grant the particular benefit. (Footnote omitted.)

1981 Op. Att'y Gen. No. 81-052 at 2-202.

Since your question addresses the provision of three fringe benefits in particular, sick leave, vacation leave and holidays, I find it necessary to discuss the statutory provisions governing those benefits in order to determine whether municipal court employees are entitled to receive a minimum statutory benefit in

any of those three areas.[3] Turning first to sick leave, I note that R.C. 124.38(A) establishes sick leave benefits for "[e]mployees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees, as defined in [R.C. 5126.20], of county boards of mental retardation and developmental disabilities." The court in *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), found that R.C. 124.38 establishes only a minimum number of hours of sick leave to which the employees governed by that statute are entitled. Thus, if municipal court employees are in the service of the county, municipality, or a civil service township, they are guaranteed the minimum number of hours of sick leave prescribed by R.C. 124.38.

For purposes of R.C. Chapter 124, the term "employee" is defined as, "any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer." R.C. 124.01(F). Thus, the municipal court personnel, who, as discussed above, are subject to appointment, are "employees" for purposes of R.C. Chapter 124. *See, e.g.*, R.C. 1901.32 (bailiffs and deputy bailiffs). Since municipal court personnel are clearly excluded from the service of a civil service township, they are entitled to the benefits of R.C. 124.38 only if they are in the service of the city or the county. As set forth above, the legislature has not provided uniformly for the placement of municipal court employees in the service of any political subdivision of the state. Rather, as provided in R.C. 1901.32(F), the General Assembly has placed certain personnel of the Cleveland Municipal Court within the civil service of the city of Cleveland. The legislature has not otherwise provided in whose service the personnel of the remaining municipal courts are to be placed. However, since the General Assembly has, as discussed above, placed municipal court personnel within the civil service generally by virtue of including such persons within the classified or unclassified service under R.C. 124.11, I must conclude that the General Assembly intended to include such personnel within either the service of the city or the county in which the court is located. *See generally In re Ford*, 3 Ohio App. 3d 416, 446 N.E.2d 214 (Franklin County 1982) (finding that employment positions which are not in the service of the state or one of the political subdivisions named in R.C. 124.01(A) are not in the civil service and finding that in order to be "in the service of the state," for purposes of R.C. 124.01, one must be employed by a state agency and be paid in whole or in part from state funds). It is clear that the employees of the Cleveland Municipal Court are in the municipal service and are entitled to the minimum number of sick leave hours as prescribed by R.C. 124.38(A). With respect to employees of other municipal courts, I find that since they must be considered to be in the service of either the city or the county in which the court is located, all municipal court employees are entitled to receive the minimum sick leave benefit prescribed by R.C. 124.38(A).

The second benefit about which you ask is vacation leave. Various statutes govern vacation leave for different types of employees. For example, R.C. 124.13 prescribes vacation leave for "[e]ach full-time state employee," except for employees who accrue vacation leave under R.C. 124.134. The term "state employee," as used in R.C. 124.13, is not defined. As discussed above, the court in *In re Ford, supra*, however, determined that there are two requisites for being considered "in the service of the state," as that term is used in R.C. 124.01, one being employment by a state agency and, two, payment in whole or in part from state funds. Since municipal court employees are not paid, even in part, by state funds, regardless of the nature of the municipal court itself, the court's employees are not "in the service of the state," and are not, therefore, state employees for purposes of R.C. 124.13. *See* 1980 Op. Att'y Gen. No. 80-087 (interpreting the meaning of the term "state employee," as used in former R.C. 121.161 (now at R.C. 124.13), and concluding that since general health districts are not state agencies and

---

[3] As stated in *State ex rel. Ohio Council 8, AFSCME v. Spellacy*, 17 Ohio St. 3d 112, 478 N.E.2d 229 (1985), the matter of collective bargaining within the courts is a matter of judicial discretion. This opinion will, however, address fringe benefits to which municipal court employees may be entitled by statute only, and will not address any possible deviations adopted pursuant to a collective bargaining agreement.

since general health district employees are not paid in whole or in part by the state, such employees are not state employees for purposes of former R.C. 121.161 (now at R.C. 124.13)).

R.C. 124.134 prescribes vacation leave for "[e]ach full-time state employee paid in accordance with [R.C. 124.152] and those employees listed in [R.C. 124.14(B)(2) and (4)]" and for "[p]art-time employees who are paid in accordance with [R.C. 124.152]." Since a municipal court employee is not a state employee, as that term is used in R.C. 124.13, I am compelled to conclude that he is not a state employee for purposes of R.C. 124.134, which is part of the statutory scheme governing vacation benefits for state employees. A municipal court employee is not, therefore, entitled to the vacation benefits prescribed by R.C. 124.134.[4]

Since I have concluded above that certain municipal court employees may be appropriately categorized as municipal employees, I must mention that no statute of which I am aware establishes vacation leave benefits for municipal employees. R.C. 325.19, however, governs vacation leave and holiday leave for those employees rendering "regular hours of service for a county." *See* R.C. 325.19(I)(1) (defining "[f]ull-time employee") and R.C. 325.19(I)(2) (defining "[p]art-time employee"). Specifically, R.C. 325.19(A) prescribes a minimum vacation benefit for "[e]ach full-time employee in the several offices and departments of the county service." *See also Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984) (the statutory entitlement to vacation leave is only a minimum which the compensating authority may supplement pursuant to its power to prescribe compensation). R.C. 325.19(B) permits each board of county commissioners to authorize vacation leave with full pay for "part-time county employees." R.C. 325.19(C) states in part that: "Days specified as holidays in [R.C. 124.19][5] shall not be charged to an employee's vacation leave" (footnote added); R.C. 325.19(D), however, sets forth the holiday pay to which each "full-time county employee" is entitled. In order to qualify for the vacation and holiday benefits provided by R.C. 325.19, a person must at least be a "county employee," a term used in, but not defined by, R.C. 325.19.

In 1987 Op. Att'y Gen. No. 87-063 (syllabus, paragraph one), I concluded that, "[e]mployees of a court of common pleas are in the county service for purposes of R.C. 325.19." After noting that common pleas court employees perform their services for the entire county, the opinion mentioned several other aspects of employment by the court, as follows:

> Pursuant to R.C. 2301.12 and R.C. 2701.08, the compensation of common pleas court employees is payable from the county treasury, generally upon warrant of the county auditor. Further, such employees are appointed by the court which, as characterized in *Tymcio v. State*, is the court for the county in which it is located and render services only to the courts by which they are appointed. Thus, the service of the common pleas court employees may be characterized as service directly to the county rather than to the state.

---

4 Pursuant to R.C. 124.133, the Director of Administrative Services is authorized to establish, by rule, an experimental program which grants to employees, among other things, vacation leave which differs from the benefits provided by R.C. 124.13 and R.C. 124.134 and sick leave different from that prescribed by R.C. 124.382 (governing sick leave of employees of state agencies). To my knowledge, no such program has yet been established.

5 R.C. 124.19 specifies which days are state holidays and states, "[e]mployees shall be paid for these holidays as specified in [R.C. 124.18]." R.C. 124.18 states in pertinent part: "An employee, whose salary or wage is paid in whole or in part by the state, shall be paid for the holidays declared in [R.C. 124.19] and shall not be required to work on such holidays," with certain exceptions.

Op. No. 87-063 at 2-386.

As is evident from the foregoing discussion of the structure of the municipal court system throughout the state and the numerous differences among all of the courts, it is not possible to determine whether all municipal court employees are county employees for purposes of R.C. 325.19. As noted previously, pursuant to R.C. 1901.32(C), all employees of the Hamilton County Municipal Court are in the unclassified service. The statute does not, however, state in whose service such persons are employed. Given that, pursuant to R.C. 1901.02, the Hamilton County Municipal Court has jurisdiction within the entire county and that, pursuant to R.C. 1901.024(A), the board of county commissioners of Hamilton county "shall pay all of the costs of operation of the Hamilton county municipal court," it would be consistent with the analysis set forth in Op. No. 87-063 to conclude that employees of the Hamilton County Municipal Court are county employees for purposes of R.C. 325.19.

The inconsistencies, discussed above, in the sources of funding as related to the territorial jurisdictions of the various municipal courts, however, lead me to conclude that, given the case-by-case manner in which the municipal court system developed, even though the legislature eventually consolidated the municipal court system within a single chapter of the Revised Code, the legislature did not thereby intend to create a uniform system governing all aspects of the formation and operation of the various municipal courts. Rather, the legislature provided for the appointment of various municipal court employees whose compensation is fixed by various persons or entities, as prescribed by statute. In the absence of clear direction as to whether any particular municipal court employees are entitled to the minimum statutory benefits prescribed by R.C. 325.19, the persons or entities that fix the employees' compensation are given the discretion to determine in a reasonable manner, upon examination of the operation of the municipal court under which its employees serve, whether such employees are county employees for purposes of R.C. 325.19. *See 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"). *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 122 N.E. 39 (1918) (a public officer is required to exercise an intelligent discretion in the performance of his official duty). Thus, I must conclude, that the compensating authorities within each municipal court are given discretion to determine in a reasonable manner whether its employees are county employees for purposes of R.C. 325.19, and, as such, are entitled to the minimum vacation and holiday benefits set forth therein. *See generally Cataland v. Cahill*; 1987 Op. Att'y Gen. No. 87-018 (finding the holiday benefit prescribed by R.C. 325.19(D) to be merely a minimum which a compensating authority may increase).

With respect to sick leave, vacation leave, and holiday pay, I am aware of no other statutes which may constrict the power of the various compensating authorities within the state system of municipal courts to establish such benefits for their employees as part of such employees' compensation.

Your second question asks whether separate agreements among the municipal legislative authorities and the boards of county commissioners would be an appropriate means for authorizing compensation in the form of reimbursement. As discussed above, the General Assembly has prescribed by statute the manner in which the operating costs, including the compensation of court personnel, are to be borne. Specifically, under R.C. 1901.024, the operating costs of all county-operated municipal courts are to be borne solely by the county in which the court is located; there is no authority for the reimbursement of any such expenses by other political subdivisions. In contrast, R.C. 1901.026 prescribes a precise method by which costs are apportioned among municipalities within the territory of a municipal court that has jurisdiction beyond the municipal court in which the court is located. I note, however, that where the various municipalities among which costs of a particular municipal court are apportioned pursuant to R.C. 1901.026 seek to carry out the mandates of that statute by means of agreements, I see no reason why such

agreements could not be made, so long as they are consistent with the statutory method of apportionment prescribed in the statute.

I turn now to your third question, in which you ask: "Are municipal judges entitled to participate in the county's deferred compensation plan and entitled to contribute to P.E.R.S. while having the county pay its proportionate share?" R.C. Chapter 145 governs the Public Employees Retirement System (hereinafter PERS). Pursuant to R.C. 145.20: "Any elective official of the state of Ohio or of any political subdivision thereof having employees in the public employees retirement system shall be considered as an employee of the state or such political subdivision, and may become a member of the system upon application to the public employees retirement board, with all the rights, privileges, and obligations of membership." Thus, municipal court judges, as elected officials, R.C. 1901.07, are entitled, but not required, to be members of PERS. *See generally* Op. No. 86-025 (participation by municipal court judges in pension pick up plans within PERS).

Incorporated within R.C. Chapter 145 are provisions governing the Ohio Public Employees Deferred Compensation Board, established by R.C. 145.72, and the program it offers under R.C. 145.73. Included among those eligible to participate in the program offered under R.C. 145.73 is "any person eligible to become a member under [R.C. 145.20]." R.C. 145.71(A). Thus, municipal court judges are eligible to participate in the program offered by the Board under R.C. 145.73. The fact that a person is eligible to participate in the program of deferred compensation established under R.C. 145.73 does not, however, exclude him from also participating in a program for which he may qualify under R.C. 145.74. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-028 (syllabus, paragraph one) (employees of a public library established under R.C. Chapter 3375 are eligible to participate in the deferred compensation program offered under R.C. 145.73 or in any additional program offered by the board of library trustees of the library district under R.C. 145.74, or both).

Your question specifically concerns a municipal court judge's eligibility to participate in a program of deferred compensation offered by a county under R.C. 145.74 which states in pertinent part:

> As used in this section:
>
> (A) *"Government unit" means a county*, township, park district of any kind, conservancy district, sanitary district, health district, public library district, or county law library.
>
> (B) *"Governing board" means, in the case of the county, the board of county commissioners....*
>
> *In addition to the program of deferred compensation that may be offered under sections 145.71 to 145.73 of the Revised Code, a governing board may offer to all of the officers and employees of the government unit not to exceed two additional programs for deferral of compensation designed for favorable tax treatment of the compensation so deferred.* Any such program shall include a reasonable number of options to the officer or employee for the investment of the deferred funds, including annuities, variable annuities, regulated investment trusts, or other forms of investment approved by the governing board, that will assure the desired tax treatment of the funds.
>
> *Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the officer's or employee's retirement system but shall not be included in the computation of any federal and state income taxes withheld on behalf of any such employee.* (Emphasis added.)

In the situation you describe, the "government unit" is the county. Thus, pursuant to R.C. 145.74, a board of county commissioners has authority to establish a program of deferred compensation for "all of the officers and employees of the government unit." It is, therefore, necessary to determine whether municipal court judges may

be considered as officers or employees of the county for purposes of R.C. 145.74.[6]

R.C. 145.74 states that the programs for deferral of compensation are to be "designed for favorable tax treatment of the compensation so deferred." As explained elsewhere in R.C. 145.74:

> Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the officer's or employee's retirement system but shall not be included in the computation of any federal and state income taxes withheld on behalf of such employee.

Such a program would not, therefore, alter the amount of compensation to which a participant is entitled; it merely alters the treatment of such income for federal and state income tax purposes. Such deferred compensation programs offered by public employers are, therefore, offered for the same purpose and operate in a similar manner as the "salary reduction" pick up plan implemented for purposes of the Public Employees Retirement System. Under a "salary reduction" pick up plan, the employer pays the employee's contributions to PERS and reduces the employee's salary by the amount of that contribution, so that there is no increased cost to the employer in "picking up" his employee's contributions under such a plan. 1984 Op. Att'y Gen. No. 84-036. The purpose of a "salary reduction" pick up plan is to treat such contributions as employer contributions under federal law, although designated by state law as employee contributions, so that such contributions are excluded from the employee's wages for purposes of income tax withholding and from the employee's gross income until the funds are eventually distributed to the employee. 1982 Op. Att'y Gen. No. 82-071. Since a "salary reduction" pick up plan is not a fringe benefit, "but is merely a different method of providing compensation," Op. No. 86-025 at 2-133, I could find no prohibition against a municipal court judge's participation in such a plan.

In this regard, I note further that, as concluded in Op. No. 84-036, with respect to a common pleas court judge who receives compensation from two public treasuries, a public officer who is compensated from two public treasuries must participate in separate plans in order to have his retirement contributions picked up as part of both components of his compensation. Similarly, with regard to a deferred compensation program in which municipal court judges seek to participate, since municipal court judges receive compensation only in part from the county treasury, I must conclude that only that portion of the judge's compensation payable from the county treasury is subject to the county's program for deferred compensation. *See generally* 1946 Op. Att'y Gen. No. 850, p. 240 (where a person is an employee of two governmental units for purposes of the Public Employees Retirement System, each employer is responsible for making the employer contributions attributable to the portion of the salary paid from that employer's treasury).

It is, therefore, my opinion, and you are hereby advised that:

1. Pursuant to R.C. 1901.12(A), a municipal court judge is entitled to receive thirty days of vacation leave in each calendar year.

2. A municipal court judge is neither entitled to, nor limited to, a specific sick leave or holiday leave benefit.

---

[6] At this point, I must emphasize that the discussion of this question is limited to the issue of a municipal court judge's eligibility under R.C. 145.74 to participate in a county's program for deferred compensation. This discussion does not attempt to address whether such participation would affect the eligibility of any such program to receive the desired tax treatment under federal law or whether a municipal court judge may be considered a county officer for any other purpose.

3. A municipal court employee is entitled to receive sick leave benefits as fixed by his compensating authority, subject to the statutory minimum prescribed by R.C. 124.38(A).

4. The various compensating authorities within a municipal court may prescribe vacation leave and holiday benefits as part of the compensation of the employees whose compensation they fix; such compensating authorities are given discretion to determine, upon examination of the operation of the municipal court served by such employees, whether its employees are county employees for purposes of the minimum vacation and holiday benefits prescribed by R.C. 325.19.

5. Municipalities among which the costs of a municipal court are apportioned under R.C. 1901.026 may enter into agreements to apportion that part of the court's operating costs attributable to employee compensation, so long as such agreements are consistent with the scheme for apportionment prescribed by that statute.

6. A municipal court judge may participate in the deferred compensation program established under R.C. 145.74 by the county from whose treasury a portion of his salary is paid, but only with respect to that portion of his salary paid by that county.