OPINION NO. 84-092

Syllabus:

The board of county commissioners, when it is not the appointing authority, is without authority to grant to county employees not covered by a collective bargaining agreement compensation equivalent to that obtained by other county employees pursuant to a collective bargaining agreement, except to the extent that it is exercising its limited statutory authority with respect to certain fringe benefits.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1984

I have before me your request for my opinion concerning the authority of the board of county commissioners to grant compensation to non-union employees. Your letter states: "The concern held by the Greene County Commission is that under the new collective bargaining statutes, those in a union bargaining unit would be able to acquire benefits in excess of those allowed by the existing statutes and that the Commission would not be authorized to equalize the other employees of the County even if they so desired."

In 1983, the General Assembly enacted Am. Sub. S.B. 133, 115th Gen. A. (1983) (eff., in part, April 1, 1984) to establish collective bargaining procedures for public employers and public employees. R.C. 4117.10, enacted as part of Am. Sub. S.B. 133, now states:

> (A) An agreement between a public employer and an exclusive representative entered into pursuant to Chapter 4117. of the Revised Code governs the wages, hours, and terms and conditions of public employment covered by the agreement. . . . Where no agreement exists or where an agreement makes no specification about a matter,

> the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. . . . Except for sections 306.08, 306.12, 306.35, and 4981.22 of the Revised Code and arrangements entered into thereunder, and section 4981.21 of the Revised Code as necessary to comply with section 13(c) of the "Urban Mass Transportation Act of 1964," 87 Stat. 295, 49 U.S.C.A. 1609(c), as amended, and arrangements entered into thereunder, Chapter 4117. of the Revised Code prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in Chapter 4117. of the Revised Code or as otherwise specified by the general assembly.

Sub. S.B. 86, 115th Gen. A. (1984) (eff. Sept. 20, 1984). As used in R.C. Chapter 4117, a public employer is defined, in part, as including "any political subdivision of the state located entirely within the state including, without limitation, any. . .county." R.C. 4117.01(B). Thus, pursuant to R.C. 4117.10, where an agreement has been entered into pursuant to R.C. Chapter 4117 between the county and an exclusive representative, such agreement governs the wages,[1] hours, and terms and conditions of employment covered by the agreement. If no agreement has been entered into or if the agreement does not provide for a certain matter, both the public employer and public employee are subject to applicable state and local laws concerning wages, hours, and terms and conditions of employment.

In order to understand how the situation about which you ask may arise, I note that the agreements referred to in R.C. 4117.10 are entered into between the public employer, which is, in this instance, the county, and an "exclusive representative." The term "exclusive representative," as used in R.C. 4117.10, is defined in R.C. 4117.01(E) as "the employee organization certified or recognized as an exclusive representative under [R.C. 4117.05]," which sets forth the manner in which an employee organization becomes the exclusive representative of all the public employees in an appropriate unit for the purposes of collective bargaining. Pursuant to R.C. 4117.06, the State Employment Relations Board (hereinafter SERB) is under a duty to "decide in each case the unit appropriate for the purposes of collective bargaining." In making such determination SERB is under certain restrictions. See, e.g., R.C. 4117.06(D)(1) (inclusion of professionals and nonprofessionals in same unit is inappropriate unless majority of both types of employees vote for inclusion). With regard to county employees in particular, SERB shall not "[d]esignate as appropriate a bargaining unit that contains employees within the jurisdiction of more than one elected county office holder, unless the county-elected office holder and the board of county commissions agree to such other designation." R.C. 4117.06(D)(5). It is, therefore, possible that not all county employees will be represented by the same exclusive representative, and, thus, will not be covered by the same agreement governing their wages, hours, and terms and conditions of employment. See generally 1980 Op. Att'y Gen. No. 80-030 (discussing organization of county employees in separate bargaining units).

Your question is whether the board of county commissioners may grant to county employees not covered by a collective bargaining agreement compensation which exceeds the amount prescribed for such employees by statute and which was obtained by other county employees pursuant to a collective bargaining agreement. It is well settled that a board of county commissioners, as a creature of statute, has only those powers expressly prescribed by statute or necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). With regard to the compensation of county employees generally, the board of county commissioners has limited authority. As a general rule, in the absence of a controlling collective bargaining agreement, the compensation of

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[1] R.C. 4117.01(L) defines wages as "hourly rates of pay, salaries, or other forms of compensation for services rendered."

county employees is fixed by the appointing authority, subject to any statutory limitations.[2] See generally Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) (the power to employ includes the power to fix compensation, including fringe benefits); 1984 Op. Att'y Gen. No. 84-061 (discussing authority of both board of county commissioners and individual appointing authorities to provide sick leave payment policy for county employees); 1981 Op. Att'y Gen. No. 81-052 (concerning the authority of public employers to set their employees' compensation).[3]

The General Assembly has granted the board of county commissioners limited authority with respect to the compensation of county employees. For example, concerning the provision of a policy for the payment of accumulated, unused sick leave, R.C. 124.39(C) authorizes a board of county commissioners to vary the policy set for county employees by R.C. 124.39(B). See Op. No. 84-061; 1983 Op. Att'y Gen. No. 83-073. Pursuant to R.C. 305.171, the board of county commissioners may procure and pay for the cost of various group insurance policies for county officers and employees and their immediate dependents. See generally 1981 Op. Att'y Gen. No. 81-082 (county commissioners' provision of dental and eye care insurance for county welfare department employees); Op. No. 80-030 (uniformity of insurance benefits for county employees provided by county commissioners not required).

I am, however, not aware of any statute which authorizes the board of county commissioners to equalize all components of compensation for all employees of the county. Rather, the legislature has given the board of county commissioners only limited authority with respect to the compensation of county employees. As set forth above, the compensation of those county employees who are not compensated pursuant to the terms of a collective bargaining agreement entered into under R.C. Chapter 4117 is fixed by the appointing authorities, subject to any constricting statutory authority, see, e.g., R.C. 124.38 (providing a minimum sick leave benefit for county employees).

It is, therefore, my opinion, and you are advised, that the board of county commissioners, when it is not the appointing authority, is without authority to grant to county employees not covered by a collective bargaining agreement compensation equivalent to that obtained by other county employees pursuant to a collective bargaining agreement, except to the extent that it is exercising its limited statutory authority with respect to certain fringe benefits.

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[2] In fixing the compensation of its employees, a county appointing authority is, of course, subject to the amount of money made available to the appointing authority by the board of county commissioners for that purpose. See, e.g., R.C. 325.17 (the compensation of employees of those officers specified in R.C. 325.27 "shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office").

[3] I note that the board of county commissioners is the appointing authority of certain county employees, see, e.g., R.C. 305.13-305.16, and has general authority to fix their compensation, R.C. 305.17. See 1981 Op. Att'y Gen. No. 81-011. The discussion of the powers of the board of county commissioners to compensate county employees is, for purposes of this opinion, limited to a discussion of the board's powers when acting outside its capacity as an appointing authority.