

OPINION 65-222**Syllabus:**

1. Section 325.19, Revised Code, requires that when the holidays enumerated therein fall on Saturday they are to be observed by the payment of eight hours holiday pay for the preceding Friday.

2. A county officer can exercise the broad authority provided in Section 325.17, Revised Code, by fixing and certifying to the county auditor the compensation of his employees to include compensation for Saturday morning when a holiday enumerated in Section 325.19, Revised Code, falls on such Saturday and the county officer closes his office on such morning and does not schedule his employees to work on such Saturday morning.

To: John F. Marchal, Darke County Pros. Atty., Greenville, Ohio
By: William B. Saxbe, Attorney General, December 14, 1965

I have your request for my opinion which reads as follows:

"The employees serving in the offices of the various elected County Officials of Darke County, Ohio, work from 8:00 A.M. until 12:00 Noon on Saturday.

"Amended Substitute House Bill Number 70 effective October 30, 1965, provides that employees who have at least six (6) months full time County service prior to the month in which a holiday occurs are entitled to 8 hours of holiday pay for certain holidays and the law further provides that in the event the holiday falls on Saturday, it is to be celebrated on the preceding Friday.

"I have been asked to seek your opinion as to the following question:

"If, under the conditions I have related above, one of the specified holidays falls on Saturday, does Amended Substitute House Bill Number 70 require that the holiday be celebrated by giving the employees off all day Friday or may the holiday celebration begin at noon on Friday?

"I have also been asked to seek your opinion on the following question:

"Under the terms of Amended Substitute House Bill Number 70 must the years of service performed by a County employee be consecutive years of service for that employee to be entitled to the vacation privileges provided by Amended Substitute House Bill Number 70 or may a County employee who heretofore worked in a County office but who was completely separated and then who was rehired in the same County office, tack together the two periods of service in determining the vacation leave which should be credited to the employee?"

Your first question asks specifically if, when the holidays enumerated in Section 325.19, Revised Code, fall on Saturday such holidays are required by that section to be observed by giving qualified employees the preceding Friday off. Section 325.19, Revised Code, provides, in pertinent part:

"In addition to such vacation leave, such county employee, working on a per diem basis, hourly basis, or salary basis, shall be entitled to eight hours of holiday pay for New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day, of each year, if he is a regular employee with at least six months full-time county service prior to the month when such holiday occurs, except that interruption of service due to illness or injury caused or induced by the actual performance of official duties and not

by an employee's negligence shall not affect such employee's right to holiday pay. In the event that any of the aforesaid holidays should fall on Saturday, the Friday immediately preceding shall be observed as the holiday.* * *

Although the use of the word "holiday" in Section 325.19, supra, suggests that county employees be given the enumerated holidays as days off, there is no requirement in that section that county employees be given a day off for the observance of such holidays.

I can find no other provision in the Revised Code that county employees be given the days off which are enumerated in Section 325.19, supra.

Your reference to Amended Substitute House Bill No. 70 suggests that your question is: How are the holidays enumerated in Section 325.19, supra, to be observed when they fall on Saturday? I will answer this question.

Section 325.19, supra, provides that qualified county employees "shall be entitled to eight hours of holiday pay for" the enumerated holidays and that if such "holidays should fall on Saturday, the Friday immediately preceding shall be observed as the holiday." The mandate of the General Assembly is clear that the holidays enumerated in Section 325.19, supra, are to be observed by the payment to qualified county employees of eight hours holiday pay for such holiday. Although, the offices of the Darke County officials are open only from 8:00 A.M. until 12:00 noon on Saturday, it is my opinion and you are advised that Section 325.19, Revised Code, requires that when the holidays enumerated therein fall on Saturday they are to be observed by the payment of eight hours holiday pay for the preceding Friday. In Opinion No. 65-216, Opinions of the Attorney General for 1965, I considered the manner in which the amount of such holiday pay should be determined.

A further question is suggested by my answer to your request: If a holiday enumerated in Section 325.19, supra, falls on Saturday when county employees are regularly scheduled to work from 8:00 A.M. to 12:00 noon, can such employees be paid for the hours they are regularly scheduled to work if a county officer closes his office on such Saturday and does not require his employees to work?

"A county officer may close his office at his discretion. See Opinion No. 3480, Opinions of the Attorney General for 1954, page 32. It is my opinion that each of the officers mentioned in Section 325.27, Revised Code, can fix the compensation for his employees and certify such compensation to the county auditor, to include compensation for Saturday morning, when a holiday enumerated in Section 325.19, supra, falls on such Saturday, although he closes his office and does not schedule his employees to work on such a Saturday. This Opinion is

in conflict with the second paragraph of the syllabus of Opinion No. 4569, Opinions of the Attorney General for 1954, page 575, which reads:

"2. A county engineer has no authority under the provisions of Section 325.17, Revised Code, to grant hourly employes in his department pay for legal holidays on which they do not work."

Section 325.17, Revised Code, which establishes the method by which the compensation of county employees is fixed, provides, in part:

"The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation for 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.* * *"

My predecessor considered that the conclusion in the second paragraph of the syllabus of Opinion No. 4569, supra, was required for the following two reasons:

One, that to permit an allowance to an employee in excess of the amount fixed by the officer and certified to the county auditor would open the way for the practice of fraud and imposition on the county. Although payment in excess of the amount fixed by the officer and certified to the county auditor might very well open the way for fraud and imposition, it is my opinion that if compensation is fixed by the officer and certified to the county auditor to include compensation for such Saturday morning, such compensation becomes a matter of record and a consideration of the possibility of fraud and imposition is obviated.

Two, that Section 325.19, supra, fixes a limitation on vacation allowances and, to permit a county officer to pay his employee for a holiday on which they do not work, would allow a county officer to exceed such limitation. It is my opinion that Section 325.19, supra, is not a limitation on the amount of vacation allowance a county employee may receive. Rather, it is my opinion that that section is a guarantee that county employees will receive at least the vacation allowance specified therein.

Section 325.17, supra, gives a county officer very broad authority to fix the compensation of his employees, limited only by the aggregate amount of compensation fixed by the Board of County Commissioners for the particular office. There is no statutory requirement that a county officer fix

the compensation of his employees by hourly, per diem, weekly or monthly rates. There is no statutory requirement that county employees work a specified number of hours per day, per week or per month. There is no statutory requirement that county employees work on any specific day.

Accordingly, it is my opinion that a county officer can exercise the broad authority provided in Section 325.17, supra, by fixing and certifying to the county auditor the compensation for Saturday morning when a holiday enumerated in Section 325.19, supra, falls on such Saturday and the county officer closes his office on such morning and does not schedule his employees to work on such Saturday morning.

Your second specific question is answered by Opinion No. 2575, Opinions of the Attorney General for 1958, page 510, with which opinion I am in accord.

Neither the amendments to Section 325.19, Revised Code, since that Opinion nor any laws enacted since that Opinion change the conclusions reached therein.