

OPINION NO. 86-077

Syllabus:

1. Members of a board of elections do not perform the duties of their office on a full-time basis for purposes of R.C. 124.13, and, therefore, are not entitled to receive vacation leave benefits pursuant to the terms of that section.
 2. Members of a board of elections are not "employees" for purposes of R.C. 325.19, and, thus, are not entitled to receive vacation leave benefits pursuant to the terms of that section.
 3. Members of a board of elections are not paid by warrant of the Auditor of State, and, thus, are not entitled to receive sick leave benefits pursuant to the terms of R.C. 124.382.
 4. Members of a board of elections are not in the "county service" for purposes of R.C. 124.38, and, therefore, are not entitled to receive sick leave benefits pursuant to the terms of that section.
 5. The Secretary of State may not establish vacation leave benefits or sick leave benefits for members of a board of elections.
 6. Full-time employees of a board of elections, as defined in R.C. 325.19(G)(1), are entitled to receive vacation leave benefits pursuant to the terms of R.C. 325.19(A). Part-time employees of a board of elections, as defined in R.C. 325.19(G)(2), are entitled to participate in any vacation leave benefits that may be provided by a board of county commissioners, by resolution, to part-time county employees under R.C. 325.19(B). (1965 Op. Att'y Gen. No. 65-193, overruled.)
 7. The Secretary of State may not establish vacation leave benefits for employees of a board of elections, or establish for such board employees vacation leave benefits in excess of those which they may be entitled to receive pursuant to the terms of R.C. 325.19.
 8. A board of elections may adopt its own policy with respect to vacation leave benefits of its employees, provided that the board's policy establishes vacation leave benefits at least as great as any benefits to which such employees may otherwise be entitled by statute.
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To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 13, 1986

You have requested my opinion on several questions relative to the status of members of a board of elections and employees of a board of elections for purposes of vacation leave benefits and sick leave benefits to which such board members and employees may be entitled. In the case of members of a board of elections, you have asked that I address the following questions:

1. Are members of a board of elections statutorily entitled to sick leave or vacation benefits?
2. If the answer to the preceding question is in the affirmative, may the Secretary of State authorize sick leave or vacation benefits differing from the statutory entitlement for board of elections members?
3. If the answer to question 1, above, is in the negative, may the Secretary of State grant sick leave or vacation benefits to board of election members?

With respect to employees of a board of elections, your specific questions are as follows:

1. Under what, if any, statutory provisions are employees of a board of elections entitled to vacation benefits?
2. If such employees are not entitled to such benefits, may they be granted to them by the board of elections or the Secretary of State?
3. If such employees are entitled to such benefits, may the board of elections or the Secretary of State authorize vacation benefits differing from the statutory entitlement for such employees?

Resolution of your questions requires that I address those provisions in R.C. Chapter 124 (department of administrative services; personnel) and R.C. Chapter 325 (compensation of county personnel) that pertain to vacation leave benefits and sick leave benefits that are made available to certain public employees. I first direct my attention to your question whether members of a board of elections are entitled by statute to receive vacation leave benefits. R.C. 124.13 provides vacation leave benefits to "[e]ach full-time state employee...after service of one year with the state, or any political subdivision of the state." Thus, in order to obtain vacation leave benefits pursuant to this section, a member of a board of elections must be a full-time state employee.

R.C. 124.01(F) defines "employee" for purposes of R.C. Chapter 124 as "any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer." Members of a board of elections are appointed to four-year terms by the Secretary of State. R.C. 3501.06; R.C. 3501.07. The Secretary of State is also empowered to remove, for a variety of reasons, any member of a board of elections. R.C. 3501.16. Insofar as members of a board of elections are

subject to appointment and removal by the Secretary of State, I conclude that such board members are "employees," as defined in R.C. 124.01(F), for purposes of determining their entitlement to vacation leave benefits under R.C. 124.13.¹

I find it unnecessary for the purpose of this opinion to determine whether members of a board of elections are "state" employees under R.C. 124.13. Instead, I find it sufficient to limit my inquiry to whether members of a board of elections perform the duties of their office on a full-time basis for purposes of R.C. 124.13.

The term "full-time" is not defined by statute for purposes of R.C. 124.13. Cf. R.C. 124.18 (providing that, "[f]orty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state");² R.C. 124.382(A)(6) (defining "full-time employee" for purposes of R.C. 124.382 (amount of sick leave credit; rate of compensation) and R.C. 124.386 (personal leave credit; payment)). The term should, therefore, be construed according to its ordinary meaning and common usage. See R.C. 1.42. Webster's New World Dictionary 564 (2d college ed. 1978) defines "full-time" as "designating, of, or engaged in work, study, etc. for specified periods regarded as taking all of one's regular working hours."

Whether a particular individual serves on a full-time basis for purposes of R.C. 124.13 depends, in large part, upon the statutory provisions governing that individual and the position or office he occupies. The terms of such statutory provisions will ordinarily give an indication of whether the individual in question engages in work or occupies a position that takes all of his regular working hours. For example, where a statute indicates that a person is to devote his entire time to the duties of an office, or to serve full time, that individual would appear to be a "full-time" employee for purposes of R.C. 124.13. See, e.g., R.C. 124.05 ("[e]ach member of the [state personnel] board [of review] shall devote his entire time to the duties of this office"); R.C. 3745.02 ("[e]ach member [of the environmental board of review] shall serve full time"); R.C. 3770.02 ("[t]he director [of the state lottery commission] shall devote his full time to the duties of his office and shall hold no other office or employment"). In contrast, persons who are not required by statute to serve full time would not appear to be subject to the provisions of R.C. 124.13. See, e.g., R.C. 3304.12(C) ("[m]embers of the

¹ As discussed later in this opinion, the Ohio Supreme Court, in State ex rel. Milburn v. Pethtel, 153 Ohio St. 1, 90 N.E.2d 686 (1950), determined that, for purposes of Ohio Const. art. II, §20, members of boards of elections are public officers. See also 1978 Op. Att'y Gen. No. 78-064. As my predecessor noted, however, in 1981 Op. Att'y Gen. No. 81-049, the fact that a person may be considered a public officer for a variety of purposes does not preclude such person from being classified as an "employee" under R.C. 124.01(F) if he is subject to appointment, removal, promotion, or reduction by an appointing officer.

² R.C. 124.18 is not applicable in this circumstance since members of a board of elections are paid, pursuant to R.C. 3501.12, by warrant of the county auditor, from county funds, R.C. 3501.17.

[rehabilitation services commission] shall be reimbursed for travel and necessary expenses incurred in the conduct of their duties, and shall receive an amount fixed pursuant to division (J) of section 124.15 of the Revised Code while actually engaged in attendance at meetings or in the performance of their duties"); R.C. 3770.01 ("[e]ach member of the [state lottery] commission shall receive compensation pursuant to division (J) of section 124.15 of the Revised Code for each day he actually attends an official meeting of the commission, but shall not receive step advancements"). In addition, whether a particular individual serves on a full-time basis is often reflected in the manner in which the individual is compensated. Compare, e.g., R.C. 124.15(B)("[t]he pay schedule of all employees shall be on a biweekly basis, with amounts computed on an hourly basis") with R.C. 124.15(J) ("[t]he director of administrative services with the approval of the state employee compensation board shall establish the rate and method of payment for members of boards and commissions").

My review of the statutory provisions in R.C. Chapter 3501 (election procedure; election officials) pertaining to members of a board of elections persuades me that such board members do not serve or perform the duties of their office on a full-time basis, and thus they are not entitled to receive vacation leave benefits pursuant to R.C. 124.13. In this regard, no provision in R.C. Chapter 3501 of which I am aware states that members of a board of elections shall hold or occupy their office, or perform the duties pertaining thereto, on a full-time basis. Cf. R.C. 3501.141(A)(referring to full-time employees of a board of elections for whom the board may provide group medical insurance). See also 1981 Op. Att'y Gen. No. 81-017 (R.C. 3501.15, which pertains to election officials as candidates for other offices, does not prohibit a member of a board of elections from being appointed to and holding an elective position, so long as the duties of that position are compatible with his duties as a board member). In addition, the duties conferred upon the members of a board of elections appear to be of such a character that the performance of those duties does not occupy the time and attention of the board members on a full-time basis. Members of a board of elections are responsible for a variety of planning and supervisory duties with respect to the conduct of elections, including establishing election precincts, R.C. 3501.11(A); fixing and providing the places for registration of voters and for holding primaries and elections, R.C. 3501.11(B); providing for the purchase, preservation, and maintenance of election fixtures and equipment used in registration, nominations, and elections, R.C. 3501.11(C); advertising and contracting for the printing of all ballots and supplies used in registrations and elections, R.C. 3501.11(F); and providing for the issuance of all notices, advertisements, and publications concerning elections, R.C. 3501.11(G). Other duties and responsibilities conferred upon members of a board of elections with respect to the conduct of elections and activities incidental thereto are enumerated in the remaining divisions of R.C. 3501.11. See R.C. 3501.11(H)-(V). Nevertheless, insofar as elections occur, as a rule, rather infrequently, see R.C. 3501.01(A)(defining "general election" as the election held on the first Tuesday after the first Monday in each November); R.C. 3501.01(D) (stating, in part, that a special election may be held only on the first Tuesday after the first Monday in February, May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election); R.C. 3501.01(E)(stating, in part, that primary elections shall be held on the first Tuesday after the first

Monday in May of each year); R.C. 3501.02 (specifying the time for holding general and special elections in the state and its political subdivisions), I do not believe members of a board of elections may be viewed as performing on a full-time basis the duties and responsibilities conferred upon them by R.C. 3501.11 with respect to such elections.

Finally, the method by which the amount of compensation of members of a board of elections is to be determined also appears to reflect an understanding on the part of the General Assembly that such board members do not serve or occupy their positions on a full-time basis. R.C. 3501.12 provides, in part, that the "annual compensation of members of the board of elections shall be determined on the basis of the population of the county according to the next preceding federal census." R.C. 3501.12 then sets forth a schedule of compensation for board members in several increments, based upon the population of the county. R.C. 3501.12(A)-(D). R.C. 3501.12 further provides that the "compensation of a member of the board shall not be less than three thousand dollars and shall not exceed fifteen thousand dollars annually." Thus, insofar as the amount of annual compensation of members of a board of elections is computed with reference to the size of a county's population, and not, for example, according to the number of hours a board member devotes to the performance of his duties on a weekly or biweekly basis, and insofar as the amount of such compensation is set within a range of three to fifteen thousand dollars per year, I believe it reasonable to conclude that such board members do not serve or occupy their positions on a full-time basis.

Thus, members of a board of elections do not perform the duties of their office on a full-time basis for purposes of R.C. 124.13. Such board members, therefore, are not entitled to receive vacation leave benefits pursuant to the terms of that section.

I now consider whether members of a board of elections are entitled to vacation leave benefits pursuant to R.C. 325.19. R.C. 325.19(A) grants vacation leave benefits to "[e]ach full-time employee in the several offices and departments of the county service," and R.C. 325.19(B) further provides that a "board of county commissioners may, by resolution, grant vacation leave with full pay to part-time county employees."

I conclude that members of a board of elections are not entitled to vacation leave benefits pursuant to R.C. 325.19 since common law principles preclude a finding that such board members are "employees" for purposes of that section. In State ex rel. Milburn v. Pethel, 153 Ohio St. 1, 90 N.E.2d 686 (1950) the Ohio Supreme Court, examining the statutes governing the powers and duties conferred upon members of a board of elections, determined that such board members exercise independent judgment on sovereign matters of the state, and thus, must be characterized as public officers for purposes of Ohio Const. art. II, §20. 153 Ohio St. at 9, 90 N.E.2d at 690. See also R.C. 3501.08 (boards of elections members are required to take and subscribe to an oath of office); 1978 Op. Att'y Gen. No. 78-064 (members of a board of elections are not "employees" for purposes of R.C. 307.441, which authorizes a board of county commissioners to procure an insurance policy insuring "any county employee against liability arising from the performance of his official duties").

Unlike R.C. Chapter 124, see R.C. 124.01(F), R.C. Chapter 325 provides no definition of the term "employee." Thus, I am constrained to abide by the common law principles enunciated by the Ohio Supreme Court in State ex rel. Milburn v. Pethel with respect to the question whether members of a board of elections are employees for purposes of R.C. 325.19. See generally 1981 Op. Att'y Gen. No. 81-073 (concluding, on the basis of common law principles, that a duly elected county engineer may not be considered an employee of his office for purposes of participating in programs established pursuant to R.C. 325.191 (programs for staff development and continuing education)). Accordingly, members of a board of elections are not "employees" for purposes of R.C. 325.19, and are not entitled to receive vacation leave benefits pursuant to the terms of that section.

You have also asked whether members of a board of elections are statutorily entitled to sick leave benefits. I note first that sick leave benefits are, pursuant to R.C. 124.382, provided to "all employees whose salary or wage is paid directly by warrant of the auditor of state." R.C. 124.382(B). Members of a board of elections are paid by warrant of the county auditor, R.C. 3501.12, rather than by warrant of the Auditor of State, and, thus, are not entitled to receive sick leave benefits pursuant to the terms of R.C. 124.382(B).

R.C. 124.38 grants sick leave benefits to those employees, as defined in R.C. 124.01(F), who are in the various offices of the county, municipal, and civil service township service, and who are employed by any state college or university, or any board of education for whom sick leave is not provided by R.C. 3319.141. As discussed above, members of a board of elections are "employees," as defined in R.C. 124.01(F). See generally 1983 Op. Att'y Gen. No. 83-085 (the sick leave benefits provided by R.C. 124.38 extend to full-time and part-time municipal employees in the absence of a municipal provision to the contrary); 1981 Op. Att'y Gen. No. 81-015 at 2-59 ("the language of R.C. 124.38 does not permit a distinction between part-time and full-time employees"). Because members of a board of elections are obviously not employees of a state college or university or a board of education and are not in the municipal or civil service township service, I need consider only whether they may be found to be employees in the various offices of the county service.

On this point I am guided by decisions of the Ohio courts specifically finding that members of a board of elections perform no functions on behalf of the county, are not county officers, and thus are not in the county service. In State ex rel. Columbus Blank Book Manufacturing Co. v. Ayres, 142 Ohio St. 216, 222, 51 N.E.2d 636, 638 (1943), the court, having reviewed the statutory provisions governing the appointment of members of a board of elections and their respective powers and duties, concluded as follows:

From a reading of the sections quoted as well as other sections of the election code we think the conclusion is inescapable that members of boards of elections act under the direct control of and are answerable only to the Secretary of State and are in law and fact deputies of the Secretary of State in his capacity as the chief election officer of the state. They perform no county functions and are not county officers.

See also State ex rel. Moss v. Franklin County Board of Elections, 69 Ohio App. 2d 115, 117, 432 N.E.2d 210, 212 (Franklin County 1980)(citing Ayres for the proposition that, "a board of elections is not a political subdivision, and its members are not county officers"); State ex rel. Rose v. Ryan, 119 Ohio App. 363, 374, 200 N.E.2d 668, 677 (Franklin County 1963)(the Secretary of State is an officer and a board of elections is an agency of the state of Ohio, and they obtain their authority and incur their duties under state statutes). Although Op. No. 81-015, which is discussed in greater detail below, concludes that employees of a board of elections are county employees for purposes of R.C. 124.38, and thus lends support for the proposition that members of a board of elections may also be considered as serving in an office of the county for purposes of R.C. 124.38, I am bound by the express language of State ex rel. Columbus Blank Book Manufacturing Co. v. Ayres and State ex rel. Moss v. Franklin County Board of Elections specifically concluding that board members serve no function of the county and are not county officers.

Accordingly, members of a board of elections are not in the county service for purposes of R.C. 124.38. Such board members, therefore, are not entitled to receive sick leave benefits pursuant to the terms of that section.³

You have also inquired about the authority of the Secretary of State to grant sick leave or vacation leave benefits to members of a board of elections. Resolution of this question requires that I examine and apply several principles pertaining to the compensation of employees in the public sector, the power of various appointing authorities to fix such compensation, and the extent to which the power to fix compensation includes the power to provide or modify fringe benefits to which such employees may be entitled by statute.

In State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976), the Ohio Supreme Court established the principle that fringe benefits provided a public officer during his term of office are considered, for purposes of Ohio Const. art. II, §20, a part of that officer's compensation. Subsequently, in Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980)(per curiam), the Ohio Supreme Court, addressing the authority of a county board of mental retardation to provide increased sick leave benefits to its employees pursuant to R.C. 124.38, expressly stated that, "[i]n order for the power to employ to have any significance, it must, of necessity, include the power to fix the compensation of such employees. It should be obvious that sick leave credits, just as other fringe benefits, are forms of compensation." 63 Ohio St. 2d at 33, 406 N.E.2d at 1100. The court in Ebert found that R.C. 124.38 establishes a minimum sick leave benefit to which employees are entitled, and held that insofar as the board is empowered to employ and fix the compensation of its employees, it is also empowered to

³ I am aware that my predecessor in 1981 Op. Att'y Gen. No. 81-015 noted, in passing, at 2-57, that, "[t]he service of the members of [a board of elections] is...to the county pursuant to state statute." This statement, however, was not necessary for the conclusion reached in Op. No. 81-015, since that opinion addressed only the question whether employees of a board of elections are in the county service for purposes of R.C. 124.38.

fix the amount of sick leave benefits for its employees, so long as such benefits are at least as great as those to which its employees are entitled by statute. Id.

In 1981 Op. Att'y Gen. No. 81-052 my predecessor commented upon the Parsons and Ebert decisions and the analysis that is to be utilized in determining whether a public employer may provide its employees with a particular fringe benefit or provide such benefit in excess of the statutory minimum to which such employees may be entitled. Op. No. 81-052 states as follows at 2-202:

Under the force of the decisions of the Supreme Court in Parsons and Ebert, I readily conclude that the 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. The court's decision in Ebert provides the framework within which a question concerning the authority of a public employer to provide a fringe benefit must be analyzed. The statutory scheme covering the public employer and its employees must be reviewed in order to establish the distinct authority of the public employer to compensate. 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).

Thus, whether the Secretary of State may provide members of a board of elections sick leave or vacation leave benefits, depends upon his authority to fix the compensation of such board members. While the Secretary of State has the power to appoint members of a board of elections, see R.C. 3501.05(A); R.C. 3501.06; R.C. 3501.07, and remove them for cause, see R.C. 3501.16, it does not appear that the Secretary of State is vested with any authority or discretion to establish, fix, or modify the compensation of such board members. Rather, as I have already noted, the compensation of members of a board of elections is fixed pursuant to statute, and the amount of such compensation is determined with reference to the size of the county's population. See R.C. 3501.12 ("[t]he annual

compensation of members of the board of elections shall be determined on the basis of the population of the county"). Since the Secretary of State has no authority to fix or modify the compensation of members of a board of elections, it follows that he also has no authority to provide fringe benefits to such board members. Thus, the Secretary of State may not establish vacation leave benefits or sick leave benefits for members of a board of elections. See also 1981 Op. Att'y Gen. No. 31-056 (appointing authorities at the state level have no independent power to change the compensation of their employees from that prescribed by statute); 1977 Op. Att'y Gen. No. 77-090 (same).

I now direct my attention to your questions pertaining to employees of a board of elections. You have asked under what, if any, statutory provisions employees of a board of elections are entitled to vacation leave benefits. You have also asked whether the board of elections or the Secretary of State may grant vacation leave benefits to employees of a board of elections, or grant such employees vacation leave benefits different from those to which they may be statutorily entitled. I believe the answers to these questions follow, in part, from the analysis and discussion I have set forth above.

I note initially that individual employees of a board of elections may be employed on either a full-time or part-time basis. In this regard R.C. 3501.14 authorizes a board of elections to appoint its employees, "prescribe their duties, and, by a vote of not less than three of its members, fix their compensation." R.C. 3501.14 further provides that board employees serve at the discretion of the board and may be removed summarily by a majority vote of the board's membership. See R.C. 124.11(A)(2)(employees of a board of elections are in the unclassified service); R.C. 3501.11(D)(a board of elections shall appoint and remove its employees). Further, R.C. 3501.14 specifically provides that, "[t]he board may also employ additional employees, when necessary, for part time only at the prevailing rate of pay for such services."

In Op. No. 81-015 my predecessor addressed the question whether employees of a board of elections are in the county service for purposes of R.C. 124.38. In concluding that employees of a board of elections are in the county service and are thereby entitled to sick leave benefits under R.C. 124.38, Op. No. 81-015 states at 2-56 to 2-57:

R.C. 3501.06 establishes a board of elections in each county of the state. While each board of elections derives its authority from the state itself, R.C. 3501.11, it is empowered to exercise that authority only within the county where situated, and its expenses are paid from appropriations by the board of commissioners of that county. R.C. 3501.17. Thus, although the members of the board of elections, and the employees thereof, are subject to dismissal by the Secretary of State, see R.C. 3501.16, in all other respects the board of elections, as an entity, is operated and funded like any other county office or board. See, e.g., R.C. 309.09 (the prosecuting attorney of the county is designated as the legal adviser of the "board of elections, and all other county offices and boards"). See also In Re Election of Council of Oak Harbor, 68 Ohio L. Abs. 242, 244, 118 N.E.2d 692, 695 (C.P. Ottawa County 1953). But

see State ex rel. Columbus Blank Book Mfg. Co. v. Ayres, 142 Ohio St. 216, 51 N.E.2d 636 (1943) (members of boards of elections are not county officers).

In sum, even though the employees of the boards of elections perform functions established by state law, there is no other legal or factual basis for distinguishing them from other county employees. This conclusion is supported also by the recent decision of the Ohio Supreme Court in Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). The court there considered whether the employees of a county board of mental retardation were entitled to the benefits provided by R.C. 124.38. The court appears to have determined that those employed by county boards of mental retardation were employees in the various offices of the county service and, as such, were entitled to the benefits of R.C. 124.38. At the time of the Ebert decision, county boards of mental retardation functioned much like county boards of elections in that both types of boards were established in each county for the state, were funded through appropriations by the boards of county commissioners, and hired their own employees. R.C. Chapters 3501 and 5126....I see no reason, therefore, to differentiate between the employment status of board of elections employees and board of mental retardation employees. I conclude, therefore, that county board of elections employees are "employees in the various offices of the county...service" and are thus entitled to the sick leave benefits provided by R.C. 124.38. (Footnotes omitted.)

Insofar as employees of a board of elections are in the service of the county and are county employees, they are entitled to receive vacation leave benefits pursuant to R.C. 325.19.⁴ As I have already noted, R.C. 325.19(A) grants vacation leave benefits to "[e]ach full-time employee in the several offices and departments of the county service," and R.C. 325.19(B) further provides that a "board of county commissioners may, by resolution, grant vacation leave with full pay to part-time county employees." See also R.C. 325.19(G)(1) (defining a "full-time employee" as used in R.C.

⁴ 1965 Op. Att'y Gen. No. 65-193 concluded that employees of a county board of elections were state employees for purposes of R.C. 121.161, which at the time the opinion was rendered, granted vacation leave benefits to full-time state employees. See 1973 Ohio Laws, Part I, 83 (Am. Sub. S.B. 31, eff. Aug. 1, 1973); 1981-1982 Ohio Laws, Part I, 1176 (Am. Sub. S.B. 550, eff., in part, Nov. 26, 1982)(transferring the provisions of R.C. 121.161 to R.C. 124.13). The opinion was based on R.C. 3501.05 and R.C. 3501.14, which state that the Secretary of State shall appoint members of boards of elections, who in turn appoint and fix the compensation of board employees, and R.C. 3501.16, which provides that the Secretary of State may remove board employees, as well as on State ex rel. Columbus Blank Book Mfg. Co. v. Ayres, 142 Ohio St. 216, 51 N.E.2d 636 (1943). In light of my immediate predecessor's analysis and conclusion in Op. No. 81-015, I conclude that employees of boards of elections are county employees for purposes of vacation leave benefits, and I overrule Op. No. 65-193.

325.19); R.C. 325.19(G)(2)(defining a "part-time employee" as used in R.C. 325.19). Thus, full-time employees of a board of elections, as defined in R.C. 325.19(G)(1), are entitled to receive vacation leave benefits pursuant to R.C. 325.19(A). Further, part-time employees of a board of elections, as defined in R.C. 325.19(G)(2), are entitled to participate in any vacation leave benefits that may be provided by a board of county commissioners, by resolution, to part-time county employees under R.C. 325.19(B).

In your remaining questions you have asked about the authority of the Secretary of State or a board of elections either to grant vacation leave benefits to employees of a board of elections, or to grant such board employees vacation leave benefits different from those to which they may be statutorily entitled. Although the Secretary of State has the power to remove employees of a board of elections for cause, see R.C. 3501.16, he has no authority to appoint such employees, or establish, fix, or modify their compensation. Rather, the authority to appoint such employees and fix their compensation has been expressly conferred upon the board of elections. See R.C. 3501.14 ("[t]he board may, when necessary, appoint...other employees, prescribe their duties, and...fix their compensation"). Since the Secretary of State has no authority to fix or modify the compensation of employees of a board of elections, he is similarly without authority to provide such board employees, as a form of compensation, fringe benefits, or to provide such board employees fringe benefits greater than those to which they may otherwise be entitled, such as vacation leave benefits. Ebert v. Stark County Board of Mental Retardation; State ex rel. Parsons v. Ferguson; Op. No. 81-052.

A board of elections may, however, pursuant to its authority to compensate its employees, grant its employees fringe benefits absent constricting statutory authority. Ebert v. Stark County Board of Mental Retardation; State ex rel. Parsons v. Ferguson; 1984 Op. Att'y Gen. No. 84-091 at 2-313. Further, as part of its power to compensate, a board of elections may provide its employees with fringe benefits greater than those to which such employees may be entitled by statute. See Cataland v. Cahill, 13 Ohio App. 3d 113, 114, 468 N.E.2d 388, 390 (Franklin County 1984)("[s]ick leave and vacation leave prescribed by statute are minimums only and, where the appointing authority is authorized to establish compensation of employees, either sick-leave or vacation-leave benefits in addition to the minimums prescribed by statute may be granted as part of compensation"); Op. No. 81-015. Thus, insofar as no provision restricts a board of elections in fixing its employees' vacation leave benefits in excess of the benefits set forth in R.C. 325.19(A) and (B),⁵ the board may adopt its own policy with respect to the vacation leave benefits it provides, so long as any such policy guarantees those employees the minimum amount of benefits to which they are entitled pursuant to R.C. 325.19.

⁵ If a board of county commissioners has established vacation leave benefits for part-time county employees pursuant to R.C. 325.19, then any policy adopted by the county board of elections granting vacation leave benefits to part-time board employees must provide benefits at least as great as any benefits to which such employees would otherwise be entitled pursuant to the policy of the board of county commissioners. See 1984 Op. Att'y Gen. No. 84-071; 1984 Op. Att'y Gen. No. 84-061; Op. No. 81-015.

Accordingly, it is my opinion, and you are advised that:

1. Members of a board of elections do not perform the duties of their office on a full-time basis for purposes of R.C. 124.13, and, therefore, are not entitled to receive vacation leave benefits pursuant to the terms of that section.
2. Members of a board of elections are not "employees" for purposes of R.C. 325.19, and, thus, are not entitled to receive vacation leave benefits pursuant to the terms of that section.
3. Members of a board of elections are not paid by warrant of the Auditor of State, and, thus, are not entitled to receive sick leave benefits pursuant to the terms of R.C. 124.382.
4. Members of a board of elections are not in the "county service" for purposes of R.C. 124.38, and therefore, are not entitled to receive sick leave benefits pursuant to the terms of that section.
5. The Secretary of State may not establish vacation leave benefits or sick leave benefits for members of a board of elections.
6. Full-time employees of a board of elections, as defined in R.C. 325.19(G)(1), are entitled to receive vacation leave benefits pursuant to the terms of R.C. 325.19(A). Part-time employees of a board of elections, as defined in R.C. 325.19(G)(2), are entitled to participate in any vacation leave benefits that may be provided by a board of county commissioners, by resolution, to part-time county employees under R.C. 325.19(B). (1965 Op. Att'y Gen. No. 65-193, overruled.)
7. The Secretary of State may not establish vacation leave benefits for employees of a board of elections, or establish for such board employees vacation leave benefits in excess of those which they may be entitled to receive pursuant to the terms of R.C. 325.19.
8. A board of elections may adopt its own policy with respect to vacation leave benefits of its employees, provided that the board's policy establishes vacation leave benefits at least as great as any benefits to which such employees may otherwise be entitled by statute.