

OPINION NO. 84-076**Syllabus:**

1. R.C. 124.386 does not establish personal leave benefits for employees of a county department of human services.
2. The director of a county department of human services, with the approval of the board of county commissioners, may grant employees of the county department of human services personal leave benefits without regard to the sick leave benefits to which such employees are entitled. Such personal leave benefits, however, must be at least as great as those benefits to which department employees may be entitled under any personal leave policy adopted by the county pursuant to R.C. 124.39(C).

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 18, 1984

I have before me your request for my opinion concerning personal leave benefits for employees of the county department of human services. I have restated your questions as follows:

1. In that employees of the county department of human services are paid directly by warrant of the county auditor, are these employees entitled to be credited with twenty-four hours of personal leave each year pursuant to R.C. 124.386(A)?
2. May personal leave benefits be given to employees of the county department of human services without changing the existing sick leave policy for such employees?

Before addressing your specific questions, I note that Am. Sub. H.B. 401, 115th Gen. A. (1984) (eff. July 20, 1984) changed the name of the Department of Public Welfare to the Department of Human Services, and the name of the county department of welfare to the county department of human services; the county director of welfare is now called the county director of human services. See R.C. 329.01; R.C. 5101.01.

With respect to your first question, I note that R.C. 124.386(A) provides in pertinent part as follows: "Each full-time employee, whose salary or wage is paid directly by warrant of the auditor of state, shall be credited with twenty-four hours of personal leave each year. . . ." Since employees of the county department of human services are county employees, see 1981 Op. Att'y Gen. No. 81-082, and thus are paid directly by warrant of the county auditor rather than by warrant of the

state auditor, these employees do not fall within the scope of R.C. 124.386(A). Thus, these employees are not entitled to be credited with twenty-four hours of personal leave each year under the terms of R.C. 124.386(A).

I turn now to your second question concerning whether personal leave benefits may be given to employees of the county department of human services without changing the existing sick leave policy for such employees. Pursuant to R.C. 329.02, the director of the county department of human services, with the approval of the board of county commissioners,

shall appoint all necessary assistants, superintendents of institutions under the jurisdiction of the department, and all other employees of the department, excepting that the superintendent of each such institution shall appoint all employees therein. The assistants and other employees of the department shall be in the classified civil service, and may not be placed in or removed to the unclassified service.

Thus, R.C. 329.02 empowers the director of the county department of human services, with the approval of the board of county commissioners, to appoint necessary employees. See 1956 Op. Att'y Gen. No. 6316, p. 152 (syllabus) ("[t]he power to appoint all necessary assistants and employees of a county department of welfare, except employees of institutions within the department, has been granted jointly to the director of the department and the board of county commissioners, by virtue of the provisions of Section 329.02, Revised Code"). Pursuant to his power to appoint, subject to the approval of the board of county commissioners, the director of the county department of human services has the implied power to fix the compensation of the department's employees; the authority to compensate includes the power to fix any fringe benefit absent constricting statutory authority. See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). See also Op. No. 81-082; 1981 Op. Att'y Gen. No. 81-052. Because the power of the director to appoint employees is subject to the approval of the board of county commissioners, the power of the director to fix the compensation, including the fringe benefits, of the department's employees is also subject to the approval of the board of county commissioners. Op. No. 81-082.

It is my understanding from your letter of request that there is an established sick leave policy for employees of the county department of human services. See R.C. 124.38; R.C. 124.39(B) and (C). You ask whether personal leave benefits may be granted to such employees without changing the existing sick leave program. Clearly, personal leave is a fringe benefit, see generally Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969), and thus may be granted to employees of a county department of human services by the director of the department, with the approval of the board of county commissioners, in the absence of any constricting statutory authority. In Op. No. 81-052, my predecessor stated at 2-202 that:

the authority [of a public employer] 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. . . . 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

¹ R.C. 329.02 also authorizes the superintendent of each institution under the jurisdiction of the county department of human services to appoint the employees of the institution. Thus, the discussion of the powers of the director of the county department of human services, with the approval of the board of county commissioners, as an appointing authority, applies with equal force to the superintendents of such institutions as the appointing authorities of their employees. See 1981 Op. Att'y Gen. No. 81-082 at 2-234, n. 3.

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.

I am unaware of any provision which limits the power of a public employer to provide employees personal leave benefits on the basis of the sick leave benefits employees are receiving. In the area of personal leave, there is no statutory provision expressly restricting the authority of the director, with the approval of the board of county commissioners, to grant such a benefit. Department employees may, however, be entitled to certain minimum personal leave benefits pursuant to R.C. 124.39(C).

The second paragraph of R.C. 124.39(C) permits political subdivisions to "adopt policies similar to the provisions contained in sections 124.382 to 124.386 of the Revised Code." As noted earlier, R.C. 124.386(A) grants personal leave benefits to "[e]ach full-time employee, whose salary or wage is paid directly by warrant of the auditor of state. . . ." R.C. 124.39(C) does not constrict the authority of a county appointing authority, such as the director of the county department of human services, with the approval of the board of county commissioners, to adopt its own personal leave policy, provided that the policy so established provides benefits which are at least as great as any benefit to which such employees may otherwise be entitled by action of the board of county commissioners, pursuant to R.C. 124.39(C). This conclusion is supported by 1984 Op. Att'y Gen. No. 84-061 and 1984 Op. Att'y Gen. No. 84-071, wherein I opined that the first paragraph of R.C. 124.39(C), which permits political subdivisions to adopt a sick leave policy from the enumerated variations, does not limit the authority of a county appointing authority to adopt its own sick leave policy, provided that the policy so established provides benefits at least as great as any benefits to which such employees may otherwise be entitled pursuant to statute or pursuant to a policy adopted by the board of county commissioners under the authority of R.C. 124.39(C).

Thus, the director of the county department of human services may, with the approval of the board of county commissioners, in the exercise of his authority to employ and fix the compensation of his employees, adopt a policy providing for personal leave, provided that such policy provides benefits which are at least as great as any benefit to which employees may be entitled under a policy set by the board of county commissioners. Since personal leave and sick leave are two separate and distinct benefits, the authority of the director to adopt personal leave benefits is in no way dependent upon the sick leave benefits to which department employees are entitled.

In conclusion, it is my opinion, and you are advised, that:

1. R.C. 124.386 does not establish personal leave benefits for employees of a county department of human services.
2. The director of a county department of human services, with the approval of the board of county commissioners, may grant employees of the county department of human services personal leave benefits without regard to the sick leave benefits to which such employees are entitled. Such personal leave benefits, however, must be at least as great as those benefits to which department employees may be entitled under any personal leave policy adopted by the county pursuant to R.C. 124.39(C).