The review, comment, and recommendations of a housing advisory board are, therefore, necessarily part of any political subdivision's implementation of the provisions of Ohio Const. art. VIII, §16. Thus, although a housing advisory board does not "approve" any proposed issuance of general obligations or expenditure of tax moneys relating to housing assistance under Ohio Const. art. VIII, §16, it does engage in decision-making in reviewing such plans and in rendering its advice and recommendations.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, a housing advisory board created by a county under R.C. 176.01 is a public body for purposes of R.C. 121.22.

OPINION NO. 92-066

Syllabus:

1. A board of county commissioners is without authority generally to vary the provisions of R.C. 9.44 concerning prior service credit for vacation leave purposes for those county employees for whom it is not the appointing authority.

2. Pursuant to R.C. 5153.12, a county children services board may grant its employees prior service credit for vacation leave purposes in excess of the minimum established for county employees by R.C. 9.44(B)(1).

To: Lynn Alan Grimshaw, Scioto County Prosecuting Attorney, Portsmouth, Ohio
By: Lee Fisher, Attorney General, December 29, 1992

You have asked my opinion on a number of questions arising from the following situation. You have indicated that only recently have the various payroll departments within the county become aware of the 1987 and 1989 amendments to R.C. 9.44, governing prior service credit in the computation of vacation benefits for public employees. Due to this oversight, a number of county employees may have been granted more prior service credit than provided for in R.C. 9.44.

Your questions specifically concern employees of the county children services board. By way of background, you state that the board of county commissioners has passed no resolutions concerning prior service credit for vacation leave benefits of county employees. The children services board, however, adopted a personnel policy in 1984, stating in part: "An employee with prior service with the State of Ohio or any political subdivision in the State receives credit for service in computing his/her length of service in determining vacation benefits...."

Based upon these facts, you ask the following questions:

1. Can a county grant prior service credit to an employee in excess of the service credit allowed by [R.C. 9.44]?

2. If the answer to question 1 is in the affirmative, what is the proper method by which the county can act to grant the service credit in excess of that allowed by [R.C. 9.44]?

3. Can a Children Services Board grant prior service credit to an employee in excess of the service credit allowed by [R.C. 9.44]?

4. If the answer to question 3 is in the affirmative, was the adoption of the personnel policy in 1984 sufficient to allow Scioto County Children Services Board to give prior service credit to employees hired subsequent to July 5, 1987 for employment by the State or any political subdivision in the computation of vacation benefits?

5. If the answer to question 3 is in the affirmative and question 4 is in the negative, can a Children Services Board which hired an individual, subsequent to July 5, 1987 with the assumption that his prior service credit with another governmental subdivision would be considered in computing his annual vacation benefits, now pass a resolution to so compute his vacation benefits from his initial date of hire by the Children Services Board?

6. If the answer to question 3 is in the affirmative and question 4 is in the negative, what is the proper method by which a Children Services Board can act to grant service credit in excess of that allowed by [R.C. 9.44]?

Establishment and Organization of County Children Services Board

Pursuant to R.C. 5153.15, a children services board is created as an agency of county government with those powers and duties set forth in R.C. 5153.16-.19, concerning children in need of public care or services. R.C. 5153.12 expressly empowers a children services board to "establish compensation rates and vacation benefits for any of its employees."

Authority of Children Services Board to Fix Vacation Benefits

It is well established that a public authority's power to establish employee compensation includes the power to establish fringe benefits, subject to any statutory limitations. *See Ebert v. Stark County Board of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). As a general rule, county employees are entitled to receive vacation benefits as prescribed by R.C. 325.19. *See generally* 1991 Op. Att'y Gen. No. 91-050.[1] R.C. 325.19(A) establishes vacation benefits for full-time county employees and provides varying amounts of annual leave, depending upon the number of years the employee has served "with the county or any political subdivision of the state." R.C. 325.19(A) also concerns standards for full-time service and the manner of computing a year of service. Pursuant to R.C. 325.19(G), however: "The employees of a county children services board that establishes vacation benefits under [R.C. 5153.12] are exempt from division (A) of this section." Thus, although county children services board employees are county employees, a county children services board may exercise its power under R.C. 5153.12 to prescribe vacation benefits for board employees without regard to the requirements of R.C. 325.19(A).

In addition to R.C. 325.19, R.C. 9.44 must be examined to determine its possible effect on the power of a children services board to prescribe its employees' vacation benefits. R.C. 9.44 reads:

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1 The compensation of public employees, as defined in R.C. 4117.01(C), is subject to collective bargaining in accordance with R.C. Chapter 4117. Since your opinion request does not mention any collective bargaining agreement, I will not address that possibility.

> (A) Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have his prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of his vacation leave. The anniversary date of his employment for the purpose of computing the amount of his vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.
>
> (B) To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:
>
> (1) A county, the person shall have only his prior service with a county counted;
>
> (2) A municipal corporation, the person shall have only his prior service with that municipal corporation counted; and
>
> (3) A township, the person shall have only his prior service with a township counted.
>
> (C) An employee who has retired in accordance with the provisions of any retirement plan offered by the state and who is employed by the state or any political subdivision of the state on or after June 24, 1987, shall not have his prior service with the state or any political subdivision of the state counted for the purpose of computing vacation leave.

The basic entitlement of R.C. 9.44 was summarized in *State ex rel. Clark v. Greater Cleveland Regional Transit Authority*, 48 Ohio St. 3d 19, 548 N.E.2d 940 (1990)(syllabus), as follows: "R.C. 9.44 imposes a mandatory duty on any political subdivision of the state of Ohio to credit employees with prior service vacation credit, absent a collective bargaining agreement entered into pursuant to R.C. Chapter 4117 which specifically excludes rights accrued under R.C. 9.44." Thus, as county employees, county children services board employees are entitled to receive prior service credit for vacation purposes as prescribed by R.C. 9.44.

County Commissioners May Not Vary R.C. 9.44 for County Employees

Your first question asks whether a county may grant prior service credit to an employee in excess of the service credit allowed by R.C. 9.44. It is well settled that a board of county commissioners is a creature of statute with only those powers expressly granted by statute or necessarily implied therefrom. *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). At the county level, in the absence of a controlling collective bargaining agreement, compensation is fixed by the various appointing authorities within the county, subject to any statutory limitations. 1984 Op. Att'y Gen. No. 84-092. The General Assembly has granted the board of county commissioners only limited authority with respect to the compensation of county employees of other county appointing authorities. *See, e.g.*, R.C. 124.39(C) (in part, authorizing a board of county commissioners to adopt certain policies concerning payment for unused sick leave); and R.C. 305.171 (board of county commissioners may procure certain group insurance policies for county personnel and their immediate dependents). No statute generally empowers a board of county commissioners to vary the prior service credit provisions of R.C. 9.44 for county employees. Therefore, a board of county commissioners may not authorize county employees for whom the board is not the appointing authority to receive prior service credit in excess of that to which the employees are entitled by R.C. 9.44.

Since this opinion has concluded that a board of county commissioners has no authority to vary the provisions of R.C. 9.44 for county employees generally, there is no need to address your second question concerning the proper procedure to effect such a change.

Children Services Board May Grant Prior Service Credit in Excess of R.C. 9.44(B)(1)

Your third question asks whether a county children services board may allow its employees prior service credit for vacation leave purposes in excess of that prescribed by R.C. 9.44. Thus, in the context of the situation described in your letter, you question whether a county children services board may grant its employees, whether hired before or after July 5, 1987, credit for vacation leave purposes for prior service with the state or any political subdivision.

The extent to which the provisions of R.C. 9.44 may be varied by a compensating authority whose employees are covered by that section was addressed in 1990 Op. Att'y Gen. No. 90-104. Although the employing entity in that situation was a city, the effect of R.C. 9.44 on the power of a county appointing authority to prescribe compensation is subject to the same analysis, set forth in Op. No. 90-104 at 2-463 as follows:

> R.C. 9.44 provides a benefit to public employees through language of entitlement rather than as a direct grant or restriction of the power of the compensating authority....Thus, R.C. 9.44(A) establishes a minimum prior service credit benefit to which certain municipal employees are entitled as a matter of law, while R.C. 9.44(B)(2) and (C) lessen or remove the minimum entitlement established in R.C. 9.44(A) with respect to the municipal employees to whom those provisions apply. The language of R.C. 9.44(B)(2) and (C) does not, therefore, operate to prohibit municipalities from counting more prior service than provided by either of these divisions. It simply removes the right of an employee covered by R.C. 9.44(B) or (C) to demand that a municipality do so as a matter of state law.

Similarly, persons employed by the county children services board, as county employees earning vacation credit currently, are entitled to the minimum prior service credit as prescribed by R.C. 9.44(A), subject to the provisions of R.C. 9.44(B)(1). Although R.C. 9.44(B)(1) removes the minimum prior service entitlement established for them by R.C. 9.44(A), it does not restrict the county children services board's authority, pursuant to its authority to establish compensation rates and vacation benefits under R.C. 5153.12, to prescribe a greater prior service credit benefit than that to which its employees are entitled by R.C. 9.44(A) or (B)(1). Therefore, in answer to your third question, a county children services board may grant its employees prior service credit for vacation leave purposes in excess of that prescribed for county employees by R.C. 9.44(B)(1).

Your fourth question may be addressed simply as part of your third question. You ask whether the personnel policy adopted by the children services board in 1984 was sufficient to authorize prior service credit in excess of that prescribed by R.C. 9.844(B)(1).

The power of a county children services board to prescribe for its employees prior service credit for vacation leave purposes in addition to that prescribed in R.C. 9.44(B)(1) arises directly from its power under R.C. 5153.12 to prescribe vacation benefits for its employees. The board's authority to prescribe vacation benefits for board employees has existed since the amendment of R.C. 5153.12 in 1977-1978 Ohio Laws, Part II, 3318 (Am. H.B. 734, eff. Oct. 11, 1977), and, thus, existed at the time the board adopted its vacation benefit policy in 1984. Since the provisions of R.C. 9.44(B)(1) prescribe only minimum prior service credit benefits for county employees, it does not restrict the authority of the children services board under R.C. 5153.12 to prescribe prior service credit benefits in excess of the minimum to which its employees are entitled by R.C. 9.44(B)(1).

In light of the answers to your third and fourth questions, it is unnecessary to address your last two questions.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners is without authority generally to vary the provisions of R.C. 9.44 concerning prior service credit for vacation leave purposes for those county employees for whom it is not the appointing authority.

2. Pursuant to R.C. 5153.12, a county children services board may grant its employees prior service credit for vacation leave purposes in excess of the minimum established for county employees by R.C. 9.44(B)(1).

OPINION NO. 92-067

Syllabus:

An individual serving as a county court judge may be employed pursuant to a municipal ordinance as a solicitor of a charter city which is located in an area of jurisdiction not under his control as county court judge, provided, that the individual, as solicitor, does not engage in the practice of law in matters pending or originating in that county court during his term as judge, and that no local departmental regulation, charter provision, ordinance, or provision of the contract employing him as solicitor prohibits the individual from simultaneously holding both positions.

To: Timothy A. Oliver, Warren County Prosecuting Attorney, Lebanon, Ohio
By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion regarding the compatibility of the positions of county court judge and solicitor for a city within the jurisdiction of the county court.

I. The Position of County Court Judge

County court judges are elected by the electors of a county court district. *See* R.C. 1907.13. The powers of a county court judge include, but are not limited to, the administering of oaths, the taking of acknowledgments of instruments of writing, the performance of marriage ceremonies, the issuing of subpoenas for various purposes, the punishment of contempts, and the exercise of those powers necessary to give effect to the jurisdiction of the court and to enforce its judgments, orders, and decrees. R.C. 1907.18.

II. The Position of City Solicitor

The position of city solicitor about which you ask is not expressly provided for in the Revised Code. *But see generally* R.C. 733.49–.62 (creating the position of, and setting forth the powers and duties of a city director of law). Rather the position of "solicitor" is created pursuant to Springboro Municipal Code ("S.M.C.") 232.01. The responsibilities of the solicitor include (1) acting as attorney and counsel for the municipal corporation and the officers thereof in their official capacities, (2) prosecuting and defending all actions by or against the municipal corporation or any department or officer thereof, (3) rendering legal opinions to the