

April 30, 2008

The Honorable Donald R. Burns, Jr.  
Carroll County Prosecuting Attorney  
11 East Main Street  
Carrollton, Ohio 44615

SYLLABUS:

2008-012

A board of county commissioners has no authority to fix the salary of a county employee for whom the power to fix compensation has been vested by the General Assembly in another county officer or entity.



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OPINION NO. 2008-012

The Honorable Donald R. Burns, Jr.  
Carroll County Prosecuting Attorney  
11 East Main Street  
Carrollton, Ohio 44615

Dear Prosecutor Burns:

You have submitted a request for an opinion concerning the authority of a board of county commissioners to determine the compensation of county employees. In conversations with a member of my staff, you have restated your question as follows: May a board of county commissioners set the salaries and raises to be paid to individual county employees for whom the board of county commissioners is not the appointing authority?

To answer your question, we begin with the well-settled principle that a board of county commissioners is a creature of statute with only those powers and duties conferred by the General Assembly. *Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993) (“[c]ounties . . . may exercise only those powers affirmatively granted by the General Assembly”); *State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Thus, whether a board of county commissioners possesses authority to set the salaries and raises of county employees for whom it is not the appointing authority depends upon whether one or more statutes grant the board such powers.

Each board of county commissioners has statutory authority to appoint certain employees, *see, e.g.*, R.C. 305.13 (clerk); R.C. 305.15 (engineer), and to fix their compensation, *see, e.g.*, R.C. 305.17. Most county employees, however, are appointed by county officers or entities other than the board of county commissioners. *See, e.g.*, R.C. 325.17 (authorizing the county auditor, county treasurer, probate judge, sheriff, clerk of the court of common pleas, county engineer, and county recorder to appoint employees, and stating that such officers “shall fix the compensation of those employees and discharge them. . . . The employees’ compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for that office”); R.C. 5126.0227 (in part, authorizing the superintendent of a county board of mental retardation and developmental disabilities to “(C) Employ persons for all

positions authorized by the board . . . [and] (D) Approve compensation for employees within the limits set by the salary schedule and budget set by the board”). In most instances, the power to fix the compensation of those employees is vested in the appointing authority. *Id.*

As explained by the court in *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), the power to employ county personnel includes the power to fix their compensation, including fringe benefits, subject to any statutory restrictions on that power. It follows, therefore, that the authority possessed by the various county appointing authorities to fix their employees’ compensation includes the authority, subject to any statutory restrictions, to determine the salary component, and any increases therein, of their employees’ compensation. *See* 2007 Op. Att’y Gen. No. 2007-012 at 2-103 (“[t]he statutory authority to fix ‘compensation’ includes the authority to establish both *salary* and fringe benefits, such as medical insurance, life insurance, and paid leave, in the absence of any statute that constricts such authority, and so long as such benefits are in excess of any minimum levels established by statute” (emphasis added)).<sup>1</sup>

One restriction upon the power of a county appointing authority to fix employee salaries is found in the statutory scheme governing the appropriation and expenditure of funds, as prescribed by R.C. Chapter 5705. Specifically, under R.C. 5705.41(B), no county, among other entities, may expend money without an appropriation made in accordance with R.C. Chapter 5705. The board of county commissioners, as the taxing authority of the county, has a duty to pass the county’s annual appropriation measure. R.C. 5705.38(A).<sup>2</sup> According to R.C. 5705.38(C), “[a]ppropriation measures shall be classified so as to set forth separately the

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<sup>1</sup> The General Assembly has granted boards of county commissioners authority to determine certain aspects of compensation for county employees. *See, e.g.*, R.C. 124.39(C) (in part, authorizing a board of county commissioners to adopt a sick leave payment policy that differs in certain respects from that prescribed by R.C. 124.39(B)); R.C. 305.171 (authorizing boards of county commissioners to establish various health care benefits for county officers and employees); R.C. 305.172 (authorizing boards of county commissioners to establish and maintain a health savings account program for county officers and employees); R.C. 325.19(B) (in part, authorizing a board of county commissioners to grant vacation leave benefits to part-time county employees). *See generally* 1984 Op. Att’y Gen. No. 84-092 (syllabus) (“[t]he 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”). These specific grants of authority to boards of county commissioners to establish various types of fringe benefits are limited to specific components, other than salary, of county employees’ compensation.

<sup>2</sup> *See generally* R.C. 5705.01(C) (defining the term “taxing authority, as used in R.C. Chapter 5705, in part, as including a county’s board of commissioners).

amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services.” *See generally* 1985 Op. Att’y Gen. No. 85-050 at 2-181 (“[c]ounty funds may not be expended until they have been appropriated as provided in R.C. Chapter 5705 and public funds may be spent only for the purpose for which they are appropriated. *See* R.C. 5705.10; R.C. 5705.38; R.C. 5705.39; R.C. 5705.41”).

As a practical matter, therefore, the sum appropriated to an appointing authority’s office by the county commissioners for the purpose of personal services limits an appointing authority’s power, in the aggregate, to fix the compensation of its employees.<sup>3</sup> The county commissioners’ authority to fix the aggregate sum available to a county appointing authority in fixing its employees’ compensation does not, however, authorize the county commissioners to fix the individual salary of each employee of that appointing authority. 1958 Op. Att’y Gen. No. 1744, p. 98, at 103-04 (there is no requirement “relative to budget requirement reports of subordinate agencies of [a] subdivision, that amounts for ‘personal services’ be shown in any detail whatever, and certainly no requirement to show the compensation of individual employees”; the board of county commissioners, as the taxing authority, is “without voice in the matter except as to approval of the aggregate amount allowed for personal services,” and the subordinate agency may fix the compensation of its employees within the limits of the aggregate amount allowed for personal services in the budget; “although the board of county commissioners may not fix [the] salary [of a particular individual], its action [in setting the aggregate amount available for personal services] may well have the practical effect of limiting the action of the [subordinate agency] in doing so”). *See, e.g.*, 1941 Op. Att’y Gen. No. 3600, p. 190 (finding that the county commissioners, in the exercise of their appropriating authority, may not nullify the power of the officers who compensate their employees in accordance with G.C. 2981 (now R.C. 325.17) to appoint and compensate those employees); 1926 Op. Att’y Gen. No. 3429, p. 253 (syllabus, paragraph two) (“county commissioners have no authority to fix the compensation of deputies, assistants, clerks and other [employees] of the officers mentioned in [G.C. 2978 (R.C. 325.28)], except that they may limit the aggregate amount which may be expended for such purpose”). Absent a specific grant of statutory authority, a board of county commissioners may not set the salary of a county employee for whom the power to fix compensation has been vested by the General Assembly in another county officer or entity.

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<sup>3</sup> In addition to the provisions of R.C. Chapter 5705 that limit the authority of county officers and entities to the expenditure of funds only in accordance with an appropriation by the board of county commissioners, the General Assembly has specifically limited certain county appointing authorities in the establishment of their employees’ compensation to the aggregate amount fixed for that purpose by the board of county commissioners. *See, e.g.*, R.C. 325.17 (limiting the aggregate compensation of those employed by each county office named in R.C. 325.27 to the amount fixed by the county commissioners for each office); R.C. 329.022 (limiting the compensation of county job and family services employees to the amount appropriated to that office for personal services).

The Honorable Donald R. Burns, Jr.

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Based upon the foregoing, it is my opinion, and you are hereby advised that, a board of county commissioners has no authority to fix the salary of a county employee for whom the power to fix compensation has been vested by the General Assembly in another county officer or entity.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann". The signature is fluid and cursive, with the first name "Marc" and the last name "Dann" clearly distinguishable.

MARC DANN  
Attorney General