April 16, 2019

The Honorable David P. Fornshell
Warren County Prosecuting Attorney
520 Justice Drive
Lebanon, Ohio 45036

SYLLABUS: 2019-014

The board of education of a joint vocational school district has no authority to establish a sick leave donation program for nonteaching employees of the district who are not members of a collective bargaining unit.
April 16, 2019

OPINION NO. 2019-014

The Honorable David P. Fornshell
Warren County Prosecuting Attorney
520 Justice Drive
Lebanon, Ohio 45036

Dear Prosecutor Fornshell:

You have requested an opinion whether the board of education of a joint vocational school district may establish a sick leave donation program for employees of the district who are not teachers and are not members of a collective bargaining unit.¹ Your letter provides the following description of the proposed program:

[T]he sick leave donation program would allow non-teaching employees to donate unused sick leave accrued by those employees into a bank for the use of eligible employees. Upon application and approval, unused sick leave in the bank would be accessible to an eligible employee, meaning that an employee with a serious illness could exhaust his or her accrued sick leave and then access the donated sick leave in the bank, all accrued by other joint vocational school non-teaching employees. The board of education itself would not provide any additional sick leave. The donation program would consist only of donated leave accrued by other non-teaching employees. Nor would there be any cash payment or any other incentive to any employee to compensate them for donating the sick time to the donation program.

As a creature of statute, the board of education of a joint vocational school district possesses only those powers expressly granted by statute or necessarily implied in order to carry out an express power. 2011 Op. Att’y Gen. No. 2011-025, at 2-206. Several sections of the Revised Code authorize the board to hire nonteaching employees and to set their compensation. See, e.g., R.C. 3311.19(A) and (E); R.C. 3319.02; R.C. 3319.081; R.C. 3319.082. As a component of compensation, the board is authorized to grant sick leave as a fringe benefit to its employees. R.C. 3319.141; see also 1981 Op. Att’y Gen. No. 81-052, at 2-202. The board may grant sick leave benefits in excess of those provided by statute, so long as that authority is not further restricted by a statute. See Ebert v. Stark Cnty. Bd. of

¹ This opinion does not apply to any employees of the board of education who are members of a collective bargaining unit or who are subject to a collective bargaining agreement.
The Honorable David P. Fornshell


R.C. 3319.141 states that sick leave benefits may be used by the employee for the following purposes: “absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to others, and for absence due to illness, injury, or death in the employee’s immediate family.” (Emphasis added.) Identical statutory language appearing elsewhere in the Revised Code has been construed as a restriction upon an appointing authority’s power to establish a sick leave donation program. 2006 Op. Att’y Gen. No. 2006-026, at 2-223; 1987 Op. Att’y Gen. No. 87-029, at 2-210 (overruled on other grounds by 2013 Op. Att’y Gen. No. 2013-013). Because the language limits the acceptable uses of sick leave to an employee’s personal illness or injury, or to an illness, injury, or death of a member of the employee’s immediate family, an appointing authority has no authority to permit employees to use the sick leave benefits for another purpose. 1987 Op. Att’y Gen. No. 87-029, at 2-210. Here, the other purpose is using sick leave for illness or injury that is not personal to the employee who earned the benefit, or for illness, injury, or death that affects a person who is not a member of the earning employee’s immediate family. An appointing authority must have express statutory authority to establish a leave donation program that permits sick leave to be used for purposes other than the statutorily defined permitted uses.2

Based on the foregoing, it is my opinion, and you are hereby advised that the board of education of a joint vocational school district has no authority to establish a sick leave donation program for nonteaching employees of the district who are not members of a collective bargaining unit.

Respectfully,

[Signature]

DAVE YOST
Ohio Attorney General

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2 R.C. 124.391(C) authorizes a county legislative authority to implement a leave donation program for county agencies. Because a joint vocational school district is not a county agency, R.C. 124.391 does not provide the board of education with authority to establish the proposed sick leave donation program.