December 23, 1994

OPINION NO. 94-092

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
117 East Columbus, Suite 200
Bellefontaine, Ohio 43311-2093

Dear Prosecutor Heaton:

You have requested an opinion concerning the authority of a board of county commissioners under R.C. 145.297 with respect to establishing the terms of a retirement incentive plan for employees of the county board of mental retardation and developmental disabilities.

Retirement Incentive Plans for Purposes of the Public Employees Retirement System

Retirement incentive plans for purposes of the Public Employees Retirement System, R.C. Chapter 145, are governed by R.C. 145.297. As stated in R.C. 145.297(B), "[a] retirement incentive plan shall provide for purchase by the employing unit of service credit for eligible employees who elect to participate in the plan and for payment by the employing unit of the entire cost of the service credit purchased." R.C. 145.297 establishes a number of requirements that must be part of every retirement incentive plan. For example, each plan must remain in effect for at least one year, and must provide for resolution of disputes and grievances arising under the plan. The adoption of such a plan permits an eligible employee to receive additional service credit if he retires within the specified time after receiving notice from the Public Employees Retirement System that service credit has been purchased for him. R.C. 145.297(C). *Cf.* 1990 Op. Att'y Gen. No. 90-075 (discussing the establishment by a county board of mental retardation and developmental disabilities of a cash payment retirement incentive program, other than for purposes of the Public Employees Retirement System, as a form of compensation to its employees).

The authority to establish a retirement incentive plan for purposes of the Public Employees Retirement System is set forth in R.C. 145.297, which states in pertinent part:

> (B) An *employing unit* may establish a retirement incentive plan for its eligible employees. In the case of a county or county agency, decisions on whether to establish a retirement incentive plan for any employees other than employees of a

> board of alcohol, drug addiction, and mental health services or county board of mental retardation and developmental disabilities *and* on the terms of the plan shall be made by the board of county commissioners. In the case of a municipal corporation, or an agency of a municipal corporation, decisions on whether to establish a retirement incentive plan and on the terms of the plan shall be made by the legislative authority. (Emphasis added.)

Thus it is generally the "employing unit" that may establish a retirement incentive plan for its eligible employees.[1]

Your opinion request assumes that it is the county board of mental retardation and developmental disabilities that has authority to determine whether to establish a retirement incentive plan for its employees. You specifically question, however, once the decision to establish such a plan has been made by the county board of mental retardation and developmental disabilities, whether R.C. 145.297(B) permits the board of county commissioners to specify the terms of that plan.

Your question appears to arise from the second sentence of R.C. 145.297(B) concerning the authority granted therein to a board of county commissioners. The first sentence of R.C. 145.297(B) establishes the general rule that it is the "employing unit" that may establish a retirement incentive plan for its employees. Because nothing in R.C. 145.297 outside of division (B) addresses the

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[1] For purposes of R.C. 145.297, "employing unit" means:

> (1) A municipal corporation, agency of a municipal corporation designated by the legislative authority, park district, conservancy district, sanitary district, health district, township, metropolitan housing authority, public library, county law library, union cemetery, joint hospital, or other political subdivision or unit of local government.
> (2) With respect to state employees, any entity of the state including any department, agency, institution of higher education, board, bureau, commission, council, office, or administrative body or any part of such entity that is designated by the entity as an employing unit.
> (3)(a)With respect to employees of a board ... of alcohol, drug addiction, and mental health services, that board;
> (b) With respect to employees of a county board of mental retardation and developmental disabilities, that board;
> (c) With respect to other county employees, the county or any county agency designated by the board of county commissioners.
> (4) In the case of an employee whose employing unit is in question, the employing unit is the unit through whose payroll the employee is paid.

R.C. 145.297(A).

authority of an employing unit to decide whether to establish a retirement incentive plan and to specify the terms of such plan, the authority granted to an employing unit by the first sentence of R.C. 145.297(B) necessarily includes the authority to make both decisions.[2]

The second sentence of R.C. 145.297(B) sets forth an exception to the general grant of authority to employing units set forth in the preceding sentence of the statute. The decision whether to establish a plan for county employees, other than employees of a board of alcohol, drug addiction, and mental health services or of a county board of mental retardation and developmental disabilities, and the decision as to the terms of such plan are left to the discretion of the board of county commissioners, rather than the employing unit. The authority conferred by R.C. 145.297(B) upon the board of county commissioners to decide whether to establish a retirement incentive plan and to specify the terms of the plan, however, extends only to plans for county employees *other than* employees of a board of alcohol, drug addiction, and mental health services or of a county board of mental retardation and developmental disabilities. R.C. 145.297 confers no authority upon the county commissioners with respect to a retirement incentive plan for employees of either a board of alcohol, drug addiction, and mental health services or of a county board of mental retardation and developmental disabilities.

In seeking to find authority to establish a retirement incentive plan for employees of a board of alcohol, drug addiction, and mental health services or of a county board of mental retardation and developmental disabilities, it is, therefore, necessary to return to the first sentence of R.C. 145.297. Because each such board is an employing unit, *see* R.C. 145.297(A)(3)(a) and (b), the decision as to whether to establish a plan and what the terms of such a plan will be is the responsibility of each such board as the "employing unit."

The conclusion that a county board of mental retardation and developmental disabilities may decide whether to establish a retirement incentive plan for its employees and also to specify the terms of the plan is consistent with the scheme governing the establishment of retirement incentive plans under R.C. 145.297 for public employees other than employees of a board of alcohol, drug addiction, and mental health services or a county board of mental retardation and developmental disabilities. Pursuant to R.C. 145.297(B), the employing unit makes both the decision as to whether to establish a retirement plan and the decision as to what the terms of that plan will be for its employees, except in the case of county or municipal employees. With respect to municipal employees, although the decisions as to whether a plan will be established and what the terms of the plan will be are not made by the employing unit, both such decisions are made by the same entity, the legislative authority of the municipality. Similarly, for all county employees, except those employees described in R.C. 145.297(A)(3)(a) and (b), the decisions as to whether to establish a plan and what the terms of the plan will be are made by the same entity, the board of county commissioners. It appears, therefore, that the General Assembly intended that in all such instances

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[2] Because a board of county commissioners is not listed as an "employing unit," however, it derives no authority from the first sentence of R.C. 145.297(B) conferring upon each "employing unit" authority to establish a retirement incentive plan.

the same entity is to make both the decision as to whether to establish a retirement incentive plan at all and the decision as to what the terms of any such plan will be.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 145.297, a board of county commissioners has no authority to determine the terms of a retirement incentive plan for employees of the county board of mental retardation and developmental disabilities.

Respectfully,

LEE FISHER
Attorney General

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117 East Columbus, Suite 200
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SYLLABUS: 94-092

Pursuant to R.C. 145.297, a board of county commissioners has no authority to determine the terms of a retirement incentive plan for employees of the county board of mental retardation and developmental disabilities.