

**OPINION NO. 87-074****Syllabus:**

1. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are not entitled upon their retirement thereunder to receive payment of their accrued, unused sick leave benefits under the terms of the policy adopted by the board of county commissioners pursuant to R.C. 124.39(C) when, subsequent to such retirement, they continue to work as full time employees of the county sheriff.
2. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are not entitled upon their retirement thereunder to receive payment of their accrued, unused vacation leave benefits under the terms of R.C. 325.19(C) when, subsequent to such retirement, they continue to work as full time employees of the county sheriff.
3. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are entitled to receive payment of their accrued, unused sick leave benefits under the terms of the policy adopted by the board of county commissioners pursuant to R.C. 124.39(C) when they retire from active county service.
4. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system are entitled, pursuant to R.C.

325.19(C), to receive payment of their accrued, unused vacation leave benefits when they separate from employment with the county sheriff, or otherwise experience a change in employment whereby they are unable to carry over their earned vacation leave credits to their new positions of employment.

5. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, may receive benefits therefrom while continuing to work as full time employees of the county sheriff, provided, however, that such an arrangement is not otherwise prohibited by the specific terms of the governing plan of the city retirement system.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, October 15, 1987**

You have requested my opinion on several questions pertaining to the payment of retirement benefits and accrued, unused sick leave and vacation leave benefits by the board of county commissioners of Hamilton County to former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute (CCI). According to your letter, the sheriff and board of county commissioners of Hamilton County agreed in 1981 to accept responsibility for the management and operation of CCI, effective August 15, 1981. Those city employees at CCI who were offered employment with the county sheriff were entitled, pursuant to the terms of R.C. 145.033,<sup>1</sup> to continue their membership in the City of Cincinnati retirement system, or to elect membership in the Public Employees Retirement System (PERS). Under R.C. 145.033, this election was contingent upon the adoption of an agreement between the board of county commissioners and authorized representatives of the

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<sup>1</sup> R.C. 145.033 states as follows:

(A) Notwithstanding section 145.03 of the Revised Code, any employee of the Hamilton county sheriff on July 1, 1981, who was in the employ of the city of Cincinnati in the Cincinnati correctional institute and who was a contributing member of the city of Cincinnati retirement system prior to that date may choose to be exempt from compulsory membership in the public employees retirement system and to continue contributing membership in the city of Cincinnati retirement system on and after that date by filing a written request for exemption from the public employees retirement system, which request shall bear the signature of the employee, with the public employees retirement board, provided that the:

(1) Board of commissioners of Hamilton county and authorized representatives of the city

city retirement system providing such employees with the option to continue contributing membership in the city retirement system on and after July 1, 1981, and the filing by the employees of a request for exemption from PERS membership within thirty days of the execution of the foregoing agreement. Such an agreement was entered into by the board of county commissioners and representatives of the city retirement system.

Subsequent to the execution of the agreement, a number of former city employees at CCI elected to continue their membership in the city retirement system, rather than join PERS. You further note that, since this election, several of these employees have retired under the city retirement system and have continued to be employed on a full time basis as employees of the county sheriff. These employees have, upon retirement under the city retirement system, requested and received payment of their accrued, unused sick leave and vacation leave benefits. The certifications for such payments were made by the county sheriff as appointing authority. The county has adopted a policy for payment of accrued, unused sick leave benefits to county employees pursuant to R.C. 124.39(C). A copy of that policy accompanies your opinion request. With respect to the payment of accrued, unused vacation leave, you have stated that the county follows the directives set forth in R.C. 325.19(C).

With respect to the foregoing situation, your specific questions are as follows:

1. Where a former employee of the City of Cincinnati in the CCI has transferred to county employment in the Hamilton County sheriff's office and has maintained membership in the city retirement system pursuant to Section 145.033, Revised Code, may he retire under the retirement system and receive retirement benefits while continuing to

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of Cincinnati retirement system adopt an agreement providing such employees with the option to continue contributing membership in that retirement system on and after July 1, 1981, upon compliance with this section;

(2) Employee files a request for his exemption within thirty days of the effective date of the agreement.

(B) No employee contributions shall be deducted from the earnable salary or compensation of, or paid to the public employees retirement system on account of, any employee of the Hamilton county sheriff who, through compliance with division (A) of this section, is exempt from compulsory membership in the public employees retirement system.

With certain exceptions, R.C. 145.03 makes membership in the Public Employees Retirement System (PERS) compulsory for employees of the state and the several local authorities mentioned in R.C. 145.01. As used in R.C. Chapter 145, R.C. 145.01(A) includes within its definition of "public employee" any person employed and paid in whole or in part by any county.

work full-time at the CCI as an employee of the sheriff?

2. Where an employee under the circumstances set forth in question 1, above, retires under the city retirement system but continues to work full-time at the CCI as an employee of the sheriff, is he entitled, either by virtue of the enclosed county policy or by statute, to the payment of his earned but unused sick leave and vacation leave as of the date of this retirement from the city retirement system?
3. If the answer to question 2, above, is in the negative, is such an employee entitled to payment of either earned but unused sick leave or vacation leave at the time of termination of service with the county sheriff, under either the enclosed county policy or by statute?
4. If the answer to question 2, above, is in the negative, are employees who have been incorrectly paid their earned but unused sick leave and vacation leave on the occasion of their "retirement" liable to the county for the amount improperly paid to them? Are any of the county officials who participated in the authorization of such payments liable to the county for such amounts?

For ease of discussion, I shall commence my analysis with your second question. You wish to know whether a former employee of the City of Cincinnati at CCI, who retires under the city retirement system but continues to work as a full time employee of the county sheriff at CCI, is entitled, either by virtue of the county policy or statute, to payment of his accrued, unused sick leave and vacation leave benefits upon his retirement from the city retirement system. R.C. 124.38 and R.C. 124.39 govern respectively the conferral of sick leave benefits upon, inter alia, those employees, as defined in R.C. 124.01(F),<sup>2</sup> in the various offices of the county, municipal, and civil service township service, and the payment of accrued, unused sick leave benefits to those employees upon their retirement. R.C. 124.38 provides, in pertinent part, that such employees "shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay," and that when such sick leave is used, "it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work." See generally Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980)(per curiam)(R.C. 124.38 establishes a minimum sick leave benefit to which employees are entitled, and insofar as the relevant appointing authority is empowered to employ and fix the compensation of its employees, it is also empowered to establish the amount of sick leave benefits for its employees, so long as such benefits are at least as great as those to which its employees are otherwise

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<sup>2</sup> As used in R.C. Chapter 124, R.C. 124.01(F) defines the term "[e]mployee," as "any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer."

entitled by statute); 1986 Op. Att'y Gen. No. 86-077; 1981 Op. Att'y Gen. No. 81-052. R.C. 124.39 further addresses the payment of accrued, unused sick leave benefits upon retirement. R.C. 124.39(B) states, in pertinent part, that an employee of a political subdivision covered by R.C. 124.38 "may elect, at the time of retirement from active service with the political subdivision, and with ten or more years of service with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of his accrued but unused sick leave credit." R.C. 124.39(B) further provides that such payment "shall be based on the employee's rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the employee at the time payment is made," and that an employee "may receive one or more payments under this division, but the aggregate value of accrued but unused sick leave credit that is paid shall not exceed, for all payments, the value of thirty days of accrued but unused sick leave."

R.C. 124.39(C) further authorizes a political subdivision to adopt a policy varying the sick leave payment provisions set forth in R.C. 124.39(B), and reads, in pertinent part, as follows:

A political subdivision may adopt a policy allowing an employee to receive payment for more than one-fourth the value of his unused sick leave or for more than the aggregate value of thirty days of his unused sick leave, or allowing the number of years of service to be less than ten. The political subdivision may also adopt a policy permitting an employee to receive payment upon a termination of employment other than retirement or permitting more than one payment to any employee.

See generally 1984 Op. Att'y Gen. No. 84-071; 1984 Op. Att'y Gen. No. 84-061; 1983 Op. Att'y Gen. No. 83-073. Thus, under R.C. 124.39(C), a board of county commissioners may vary the policy set for county employees by R.C. 124.39(B) with respect to the payment of accrued, unused sick leave benefits. 1984 Op. Att'y Gen. No. 84-092 at 2-316; Op. No. 83-073 at 2-305. But cf. 1987 Op. Att'y Gen. No. 87-029 at 2-208 (there is no authority for a board of county commissioners to institute sick leave policies on a countywide basis because the board's authority to fix compensation, which includes sick leave and other fringe benefits, is limited to those instances in which the board of county commissioners is the appointing authority). See also note three, infra.

According to your letter, the board of county commissioners of Hamilton County has adopted, pursuant to R.C. 124.39(C), a separate policy addressed to the payment of accrued, unused sick leave benefits, and the county sheriff has further indicated that he abides by that policy with respect to employees of his office.<sup>3</sup> The policy promulgated by the

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<sup>3</sup> R.C. 325.17 and R.C. 325.27 confer upon the county sheriff, as appointing authority, the power to fix the compensation of employees of his office. See 1987 Op. Att'y Gen. No. 87-018. The power of an appointing authority to employ and fix the compensation of its employees necessarily includes the power to permit sick

board, a copy of which accompanies your letter, provides in pertinent part as follows:

Upon retirement from active County Service, pursuant to Chapter 145 of the Ohio Revised Code, and with ten (10) or more years of public service with the County or any public agency as defined in Chapter 143<sup>4</sup> of the Ohio Revised Code, each employee shall be entitled to a lump-sum payment for his accrued, but unused sick leave credit, on the basis of one hour's pay for each two hours of accrued sick leave credit. (Emphasis and footnote added.)

The policy further provides that payment of accrued, unused sick leave benefits "shall be based on the employee's rate of pay at the time of retirement," and establishes a maximum benefit payment of seven hundred twenty hours for an employee whose rate of pay is based upon a biweekly pay period of eighty hours, and six hundred thirty hours for an employee whose rate

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leave and other fringe benefits as forms of compensation, subject to any constricting statutory authority. Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980)(per curiam); 1987 Op. Att'y Gen. No. 87-029; 1986 Op. Att'y Gen. No. 86-027; 1981 Op. Att'y Gen. No. 81-052. See generally State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 629 (1976)(for purposes of Ohio Const. art. II, §20, fringe benefits, although not strictly a part of salary, are part of compensation). In this regard, the various sick leave policies set forth in R.C. 124.38 and R.C. 124.39 merely establish minimum sick leave benefits to which employees are entitled, and do not otherwise limit the power of a county appointing authority to adopt its own policy with regard to the payment of accrued, unused sick leave benefits to its employees. Ebert v. Stark County Board of Mental Retardation; Cataland v. Cahill, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984); Op. No. 81-052; 1981 Op. Att'y Gen. No. 81-015. In particular, a policy adopted by a board of county commissioners under R.C. 124.39(C) for the payment of accrued, unused sick leave benefits to county employees does not restrict the power of a county appointing authority to adopt its own policy in this regard, "provided that the...policy [so established] provides benefits at least as great as any benefits to which such employees may otherwise be entitled either by statute or by action of the county commissioners." Op. No. 81-015 at 2-59 (footnote omitted). Accordingly, in this instance, the county sheriff, as appointing authority, may, if he so chooses, adopt a policy for the payment of accrued, unused sick leave benefits to his employees that differs from that promulgated by the board of county commissioners under R.C. 124.39(C), provided any such policy grants benefits as great as those established by the board's policy. See 1984 Op. Att'y Gen. No. 84-061 (syllabus).

<sup>4</sup> The provisions of former R.C. Chapter 143 (civil service) were amended and renumbered in 1973 Ohio Laws, Part I, 533 (Am. S.B. 174, eff. Dec. 4, 1973), and now appear in R.C. Chapter 124 (department of administrative services; personnel).

of pay is based upon a biweekly pay period of seventy hours. Further, the maximum benefit payment for all other employees is to be calculated by dividing the number of hours in their biweekly pay period at the time of retirement by ten and multiplying the resulting quotient by ninety. Finally, the policy states that payment thereunder "shall be considered to eliminate all sick leave credit accrued by the employee at the time of payment."

R.C. 325.19 addresses the payment of vacation leave benefits and holiday pay to county employees. R.C. 325.19(A) states, in pertinent part, that each full time employee in the several offices and departments of the county service, including full time hourly rate employees, after service of one year with the county or any political subdivision of the state, "shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay," and R.C. 325.19(B) further provides that a board of county commissioners "may, by resolution, grant vacation leave with full pay to part-time county employees." See also R.C. 325.19(G)(1) and (2) (defining respectively the terms "[f]ull-time employee," and "[p]art-time employee," as used in R.C. 325.19). R.C. 325.19(C) describes, in pertinent part, the payment of accrued, unused vacation leave benefits as follows:

An employee is entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment. (Emphasis added.)

The county sheriff has indicated that he is guided by the foregoing provisions of R.C. 325.19(C) with respect to the payment of accrued, unused vacation leave benefits to employees of his office.<sup>5</sup>

I conclude that employees of the county sheriff who were formerly employed by the City of Cincinnati at CCI, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are not entitled, upon their retirement thereunder, to receive payment of their

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<sup>5</sup> As in the case of sick leave benefits provided under R.C. 124.38 and R.C. 124.39, see note three, *supra*, the county sheriff may, pursuant to his power to appoint and fix the compensation of his employees under R.C. 325.17 and R.C. 325.27, and absent constricting statutory authority, adopt a policy for the payment of accrued, unused vacation leave benefits to his employees that is different from that set forth in R.C. 325.19(C), provided any such policy grants benefits as great as those established under R.C. 325.19(C). Ebert v. Stark County Board of Mental Retardation; Cataland v. Cahill; 1986 Op. Att'y Gen. No. 86-077 at 2-436. However, the language of R.C. 325.19(C) does limit such payment to the time of the employee's separation from county service, or in the case of an employee's death. 1987 Op. Att'y Gen. No. 87-063.

accrued, unused sick leave benefits when, subsequent to such retirement, they continue to work as employees of the county sheriff. With respect to accrued, unused sick leave benefits, the policy promulgated by the board of county commissioners states unambiguously that a county employee shall be entitled to payments therefor only upon retirement from active county service. According to the documentation accompanying your letter, it is undisputed that the individuals in question have continued to work as full time employees of the county sheriff notwithstanding their retirement under the city retirement system. Such individuals, therefore, have not, in fact, retired from active county service and, accordingly, are not entitled to payment of their accrued, unused sick leave benefits pursuant to the terms of the accrued, unused sick leave policy adopted by the board of county commissioners under R.C. 124.39(C).

Similarly, I conclude that these same employees are not entitled, upon their retirement under the city retirement system, to receive payment of their accrued, unused vacation leave benefits when, subsequent thereto, they continue to work as employees of the county sheriff. R.C. 325.19(C) states, in pertinent part, that an employee is entitled to receive compensation for his accrued, unused vacation leave "at time of separation." The foregoing language of R.C. 325.19(C) has been interpreted as encompassing, *inter alia*, any change in employment status or position wherein an employee is unable to carry over earned vacation credit to his new employment. 1981 Op. Att'y Gen. No. 81-001; 1980 Op. Att'y Gen. No. 80-057; 1962 Op. Att'y Gen. No. 3425, p. 931. See also 1983 Op. Att'y Gen. No. 83-074 at 2-307 ("[p]ursuant to [R.C. 325.19(C)], an employee is entitled to payment for accumulated unused vacation leave at the time of separation from employment"). In the present case, it is apparent that the employees described in your letter have not separated from their employment within the meaning of R.C. 325.19(C). The individuals in question became employees of the county sheriff upon his assumption of the administration and operation of CCI. Upon becoming eligible therefor, these individuals then applied for the retirement benefits to which they were entitled under the city retirement system as a result of their membership therein. They have continued to work, however, as full time employees of the county sheriff notwithstanding their "retirement," and the receipt of benefits incidental thereto. Thus, these employees have not separated from their employment with the county sheriff, and, accordingly, are not entitled to receive payment of their accrued, unused vacation leave benefits under the terms of R.C. 325.19(C).

The answer to your third question follows from the preceding discussion of the issues presented by your second question. Former employees of the City of Cincinnati at CCI who are now employees of the county sheriff are entitled, under the terms of the sick leave policy promulgated by the board of county commissioners pursuant to R.C. 124.39(C), to receive payment of their accrued, unused sick leave benefits upon their retirement from active county service. Those employees are also entitled, under the terms of R.C. 325.19(C), to receive payment of their accrued, unused vacation leave benefits at the time they separate from employment with the county sheriff, or otherwise experience a change in employment whereby they are unable to carry over their earned vacation leave credits to their new positions of employment. Op. No. 81-001; Op. No. 80-057.



In your fourth question you ask whether those employees of the county sheriff who were incorrectly paid their accrued, unused sick leave and vacation leave benefits at the time they retired under the city retirement system are liable to the county for such payments, and, further, whether any of the county officials who participated in the authorization of such payments are liable to the county therefor. R.C. Chapter 117 provides that the Auditor of State "shall be the chief inspector and supervisor of public offices," R.C. 117.09, and confers thereupon the responsibility to "audit all public offices as provided" therein, R.C. 117.10. See R.C. 117.01(D) (defining "[p]ublic office," as used in R.C. Chapter 117, to include any "political subdivision, or other organized, body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government"); R.C. 117.11 (frequency and scope of audits); R.C. 117.25 (Auditor of State's audit report); R.C. 117.26; R.C. 117.27 (filing of audit reports). R.C. 117.28 states, in part, that where an audit report of the Auditor of State sets forth that any public money has been illegally expended, the public officer receiving the certified copy of the audit report pursuant to R.C. 117.27, may "institute civil action in the proper court in the name of the public office to which the public money is due...for the recovery of the money...and prosecute the action to final determination." See also R.C. 117.29 (a criminal proceeding may be instituted against a public official where an audit report sets forth any malfeasance or gross neglect of duty on his part); R.C. 117.32 (a surety may be liable on an official bond given on behalf of an officer or employee). Thus, under R.C. 117.28 and R.C. 117.29, a civil or criminal action may be initiated for the recovery of public moneys that have been illegally expended. State ex rel. Smith v. Maharry, 97 Ohio St. 272 (1918); 1976 Op. Att'y Gen. No. 76-017. See generally State v. McKelvey, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967) (syllabus, paragraph four) (R.C. 309.12, which authorizes civil suit by the prosecuting attorney to recover misapplied county funds, is to be construed to permit suit against the ultimate wrongful recipient of the funds); Portage Lakes Joint Vocational School District Board v. Rowman, 14 Ohio App. 3d 132, 470 N.E.2d 233 (Summit County 1984); 1982 Op. Att'y Gen. No. 82-006 at 2-17 (discussing the criteria by which the legality of a particular expenditure of public moneys should be evaluated for purposes of R.C. 117.10, the statutory predecessor of R.C. 117.28); 1976 Op. Att'y Gen. No. 76-017 at 2-52 (under R.C. 117.10, now R.C. 117.28, it is the responsibility of the office of Auditor of State to determine, in the first instance, whether an illegal expenditure has occurred after the facts and circumstances of the expenditure have been fully and thoroughly investigated).

The role of assigning liability to particular individuals in a given case is one that rests exclusively within the province of the judiciary. Thus, as a member of the executive branch of government, I am unable to render any judgment about the extent to which particular persons are, or may be, civilly or criminally liable for public moneys that have allegedly been expended in a manner contrary to law. See, e.g., 1983 Op. Att'y Gen. No. 83-001 at 2-2 (the Attorney General "cannot render a verdict as to the criminal guilt or innocence of a particular person or organization. Only a court of law may make such a decision"). See also 1984 Op. Att'y Gen. No. 84-040; 1983 Op. Att'y Gen. No. 83-037; 1983 Op. Att'y Gen. No. 83-024. Accordingly, in this instance, I must respectfully decline to render you an opinion on your fourth question.

Finally, you have asked about the propriety of an individual working as a full time employee of the county sheriff while simultaneously receiving benefits paid by the city retirement system. In a number of instances, the Revised Code does impose specific limitations upon the reemployment rights of certain public employment retirants. R.C. Chapter 145, for example, governs the rights, duties, and obligations of public employees who are, or have been, contributing members of PERS. In this regard, R.C. 145.32 provides generally for voluntary and compulsory retirement of PERS members, and states, in particular, that any such member who accepts an allowance under R.C. Chapter 145 or who is compelled to retire and who withdraws his accumulated contributions in lieu of accepting a retirement allowance is ineligible for regular reemployment in any capacity that comes within R.C. Chapter 145. R.C. 145.32(B). Thus, R.C. 145.32 prohibits an individual from simultaneously receiving a retirement allowance and being regularly reemployed in a position that falls within the scope of R.C. Chapter 145.

R.C. 145.32 is limited, however, by several other provisions in R.C. Chapter 145 that address the reemployment of certain PERS retirants other than disability retirants. In this regard, R.C. 145.381 governs the reemployment rights of a retirant who is elected to an office of the state or any political subdivision of the state, R.C. 145.381(A), and retirants who are reemployed in certain temporary capacities, R.C. 145.381(B). See also R.C. 145.381(C) (providing for the suspension or forfeiture of retirement benefits, and the reestablishment of PERS membership, when a retirant becomes reemployed on a full time basis); R.C. 145.381(D) (a retirant shall not receive a retirement allowance for any period for which he is compensated under a contract or other arrangement whereby he is to perform personal or professional services for the employer by which he was employed at the time of retirement); R.C. 145.381(E) (the Public Employees Retirement Board may promulgate rules to carry the provisions of R.C. 145.381 into effect; such rules appear at 1 Ohio Admin. Code 145-19-10). In addition, R.C. 145.382 permits retirants to accept regular or temporary reemployment in any of the three categories of positions named therein, notwithstanding the requirements otherwise imposed therefor by R.C. 145.381. In 1985 Op. Att'y Gen. No. 85-037 I stated that individuals who are reemployed pursuant to the terms of R.C. 145.381(C) or R.C. 145.382 renew their membership in PERS and that this renewed membership results in a cessation of their retirement allowances, insofar as no provision in R.C. Chapter 145 permits members of PERS to receive a retirement allowance. See R.C. 145.41 (membership in PERS ceases upon retirement). Cf. R.C. 145.381(B) (a retirant who is reemployed on a temporary basis may continue to receive a retirement allowance but may not reestablish membership in PERS). Thus, "[r]eceipt of a retirement allowance and contributing PERS membership based on re-employment within R.C. Chapter 145 are mutually exclusive." Op. No. 85-037 at 2-132.

I am unaware, however, of any provision in the Revised Code that addresses the reemployment rights of an individual who is receiving benefits and allowances pursuant to the terms of a retirement plan other than PERS or one of the other state retirement systems. In particular, my research has not disclosed any statutory provision that prohibits a person who is receiving benefits from a municipal retirement system from simultaneously working as a full time employee of another

political subdivision of the state. But cf. R.C. 124.85 ("[n]o person who is receiving a disability benefit or service retirement pension or allowance from any state or municipal public retirement system in Ohio, shall be eligible for membership in any other state or municipal retirement system of this state"). In the absence of such a provision, it appears that the individuals in question may continue to receive benefits from the city retirement system while working as full time employees of the county sheriff, provided, however, that such an arrangement is not otherwise prohibited by the specific terms of the governing plan of the city retirement system.

Accordingly, based upon the foregoing it is my opinion, and you are advised that:

1. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are not entitled upon their retirement thereunder to receive payment of their accrued, unused sick leave benefits under the terms of the policy adopted by the board of county commissioners pursuant to R.C. 124.39(C) when, subsequent to such retirement, they continue to work as full time employees of the county sheriff.
2. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are not entitled upon their retirement thereunder to receive payment of their accrued, unused vacation leave benefits under the terms of R.C. 325.19(C) when, subsequent to such retirement, they continue to work as full time employees of the county sheriff.
3. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, are entitled to receive payment of their accrued, unused sick leave benefits under the terms of the policy adopted by the board of county commissioners pursuant to R.C. 124.39(C) when they retire from active county service.
4. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system are entitled, pursuant to R.C. 325.19(C), to receive payment of their accrued, unused vacation leave benefits when they separate from employment with the county sheriff, or otherwise experience a change in employment

whereby they are unable to carry over their earned vacation leave credits to their new positions of employment.

5. Former employees of the City of Cincinnati at the Cincinnati Community Correctional Institute who are now full time employees of the county sheriff, and who have elected, pursuant to R.C. 145.033, to continue their membership in the city retirement system, may receive benefits therefrom while continuing to work as full time employees of the county sheriff, provided, however, that such an arrangement is not otherwise prohibited by the specific terms of the governing plan of the city retirement system.