

**Note from the Attorney General's Office:**

1958 Op. Att'y Gen. No. 58-2575 was modified by 1989 Op. Att'y Gen. No. 89-012.

2575

EMPLOYEE, COUNTY—VACATION TIME, COMPUTATION OF YEARS OF SERVICE; ACCUMULATED VACATION LEAVE—§325.19 R.C.

SYLLABUS:

A county employee with fifteen years service with the county, continuous or intermittent, and regardless over what period the service was performed, is entitled to three (3) weeks vacation leave, and any such employee with accumulated vacation leave may in special cases as determined by the head of the department or office, be granted unused vacation leave not to exceed six (6) weeks in any one year, as provided in Section 325.19, Revised Code.

Columbus, Ohio, August 19, 1958

Hon. John H. Barber, Prosecuting Attorney  
Fulton County, Wauseon, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“I have been asked by the Fulton County Auditor to seek your formal opinion on the interpretation of section 325.19 ORC

providing for county employees vacation leave in several particulars, to-wit:

- “1. In arriving at fifteen years of county service does the fifteen years have to be continuous or may it be accumulated over a period of years with several periods of interruption?”
- “2. We have several employees who have in excess of fifteen years of intermittent service. If this service is cumulative, how far back can it be figured to arrive at the total accumulated vacation leave?”
- “3. In the event of twelve accumulated weeks of unused vacation leave, can the maximum six weeks be taken this year and six weeks carried forward to next year and so on until this time is all used up?”

The statute presently applicable to vacation leave for county employees and to allowance of unused vacation for prior years is Section 325.19, Revised Code. The first paragraph of this section which has application to the matters mentioned in your request reads as follows:

“Each employee in the several offices and departments of the county service, after service of one year, shall be entitled during each year thereafter, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees having fifteen or more years of service are entitled to three calendar weeks of such leave. In special cases as determined by the head of the department or office affected, the annual leave during any one calendar year may be extended to include unused vacation leave of previous years provided the total leave taken in any one year shall not exceed six weeks.”

This statute does not require that the service of a county employee be continuous to entitle him to the three week vacation provision nor does the time during which the employment was rendered enter into the matter. If an employee has had fifteen years service with the county over any period regardless how far back in years this service began and how intermittent his employment may have been, he would be entitled to the three week vacation provision as set forth in this statute. In the opinion of my immediate predecessor, Opinion No. 5052, Opinions of the Attorney General for 1955, page 137, in discussing the statutes for vacation of state and county employees, Sections 121.161 and Section 325.19 Revised Code, the following is found:

“It will be observed that the original provision giving a two weeks vacation to state employes, was enacted in 1921, long prior

to the statute relative to county employes. The provision as to county employes was enacted in 1947, and provided for a maximum of two weeks. Both of these laws were amended, but by separate acts in 1953, granting an extra week for fifteen years service. Neither statute governing the state or county makes any reference to the other and neither contains any provision as to any right to transfer vacation leave gained in one service to the other service. *'Years of service', as used in each of these statutes, could have no other reasonable meaning than service in the public body with which the statute is dealing.*" (Emphasis added)

It is believed that the foregoing is a complete answer to questions one (1) and two (2) of your inquiry.

Your third question would be controlled by the last sentence of the first paragraph of Section 325.19, *supra*. Accumulated leave is not allowed as a matter of law or by right. It can be used in special cases as determined by the head of the department or office affected provided the amount of vacation leave and accumulated vacation leave taken in any one year does not exceed six (6) weeks.

In the specific example set forth in your third inquiry of an employee having twelve (12) accumulated weeks of unused vacation leave, taking six (6) weeks this year and six weeks carried forward to the following year and so on until this time is all used up, would be solely within the discretion of the head of the department or office if considered by him as a special case.

Therefore in answer to your inquiry you are advised that:

A county employee with fifteen years service with the county, continuous or intermittent, and regardless over what period the service was performed is entitled to three (3) weeks vacation leave, and any such employee with accumulated vacation leave may in special cases as determined by the head of the department or office, be granted unused vacation leave not to exceed six (6) weeks in any one year, as provided in Section 325.19, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General