

1035

1. SICK LEAVE—TOWNSHIP EMPLOYEES—NOT PROVIDED FOR BY SECTION 486-17c G. C.
2. TOWNSHIP TRUSTEES—MAY GRANT FULL TIME EMPLOYEES REASONABLE SICK LEAVE WITH PAY—IN ABSENCE OF STATUTES EXPRESSLY GRANTING SICK LEAVE FOR DEFINITE PERIOD.

SYLLABUS:

1. Section 486-17c, General Code, does not provide for sick leave for township employees.
2. In the absence of a statute expressly granting sick leave for a definite period to township employees, township trustees may grant their full time employees reasonable sick leave with pay.

Columbus, Ohio, December 28, 1951

Hon. Harold K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

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

"The question has been asked of me if a full-time township employe is entitled to sick leave under Section 486-17c.

"In reading this section, it speaks of the full-time employe whose salary is paid in whole or part by the State of Ohio and the full-time employe in the various county services and municipal services and each full-time employe of the Board of Education but the section does not seem to mention a township employe unless a township employee is considered in that part of the section which states: 'This act shall be uniformly administered as to the employes in each agency of the State government.'

"Will you, therefore, kindly give me your opinion as to whether or not a township employe is entitled to sick leave under this section."

Section 486-17c, General Code, to which you refer, reads as follows:

"Each full-time employe, whose salary or wage is paid in whole or in part by the state of Ohio and each full-time employe in the various offices of the county service and municipal service, and each full-time employe of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth ($1\frac{1}{4}$) work days with pay. * * * An employe who transfers from one public agency to another public agency shall be credited with the unused balance of his accumulated sick leave. * * * This act shall be uniformly administered as to employes in each agency of the state government. * * *."

It will be observed that this section makes specific reference to employes "in the various offices of the county service and municipal service and each full time employe of any board of education." No other departments of the government are referred to, and there is certainly a clear omission of any reference to employes of a township. Accordingly, it appears to me that the maxim "expressio unius est exclusio alterius" must apply.

In opinion No. 2077 rendered by my immediate predecessor July 26, 1950, it was held :

“I. Employes of a library created under the provisions of Section 7635, General Code, 115 O. L., Pt. 2, page 278, are not employes entitled to sick leave pursuant to Section 486-17c, General Code.”

The statute there referred to provided for the organization, under independent boards of trustees, of municipal and school district libraries. It was pointed out in the opinion that although the board of trustees in the case under consideration was appointed by a board of education, yet the employes of the library board were in no sense employes of the board of education. It is very obvious that employes of a township are in no sense employes of any of the public authorities named in said Section 486-17c.

Your letter makes special reference to the language of Section 486-17c, *supra*, which states :

“This act shall be uniformly administered as to the employes in each agency of the state government.”

The meaning of this sentence is not altogether clear. In referring to “each agency of the state government” the General Assembly may have intended to emphasize the application of the law to all of the many subordinate departments of the state government, or it may have intended to embrace these and also those subordinate agencies which are created by law to exercise locally certain powers of government. This class would include townships as well as boards of education. But even applying this broader definition, we still have the explicit language of the statute which includes counties and boards of education but omits townships, and I know of no principle of construction of statutes which would permit us to read “townships” into the statute, as worded.

It is accordingly my opinion that Section 486-17c, General Code, does not provide for sick leave for township employes. However, independent of the statute in question, I am of the opinion that the government heads of the various political subdivisions would have implied power to grant their regular employes reasonable leave with pay, both as to vacations and by way of sick leave. In Opinion No. 728, Opinions of the Attorney General for 1939, page 917, rendered prior to the enactment of Section 2394-4a, General Code, granting a definite two weeks' vacation to county

employees, and long before the enactment of Section 486-17c, supra, it was held:

"1. County employes on a monthly basis are entitled to a reasonable leave of absence for vacation or a sick leave if the contract of hire so provides either expressly or by necessary reasonable implication.

"2. Section 154-20, General Code, granting leaves of absence to state employes may be used as a guide to determine what a reasonable time may be in view of the fact that no specific statute covering the subject may be found.

"3. If provisions are made for leave for vacation or sickness, it is discretionary with the hiring official whether one period be granted for either vacation or sickness or two periods be granted, one for vacation and one for sickness."

In the body of the opinion it was said:

"As a matter of sound public policy, leaves of absence for vacation or sickness are desirable and in all instances should be read into the contract of hire, if not expressly, then by reference to the general policy followed in private business and in state and federal governments."

I can see no reason why this implied power should not pertain to township trustees as well as to county officers.

In the opinion No. 2077 of 1950, relating to library employes, from which I have quoted, the Attorney General further held:

"2. The board of library trustees has the power pursuant to Section 7630, paragraphs 7 and 8, of the General Code, to make rules and regulations governing sick leave benefits for its employes."

The rule making power referred to was general in its terms and contains no reference to vacation or sick leave.

Accordingly, it is my opinion that independent of any statute granting to employes of a township a definite period of sick leave with pay, the township trustees may allow their full time employes such sick leave for a reasonable period.

Respectfully,

C. WILLIAM O'NEILL

Attorney General.