

July 16, 2021

The Honorable Martin P. Votel
Preble County Prosecuting Attorney
101 E. Main Street
Eaton, Ohio 45320

SYLLABUS: 2021-017

R.C. 1901.12 does not permit municipal-court judges
to rollover unused vacation days to future years.



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2021-017

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Preble County Prosecuting Attorney
101 E. Main Street
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Dear Prosecutor Votel:

You have requested an opinion regarding two questions, which I have framed as follows:

If a judge does not use all 30 vacation days in any given calendar year, does that unused time roll over to the next year?

If so, is there a cap on the number of days that can be rolled over?

I conclude that the answer to the first question is no: judges whose vacation time is governed by R.C. 1901.12 may not roll over the unused vacation time to future years. That answer moots the second question.

Section 1901.12(A) of the Revised Code provides: “A judge of a municipal court is entitled to thirty days of vacation in each calendar year. Not less than two hundred forty days of open session of the municipal court shall be held by each judge during the year, unless all business of the court is disposed of sooner.” The section does not speak at all to what happens with unused vacation time. For the following reasons, it is best read not to permit rollover.

First, the statute provides that judges are “*entitled to thirty days of vacation in each calendar year.*” Allowing rollover would mean judges are entitled to more than thirty days of vacation in every year—they would have a right to thirty days of vacation plus whatever time has previously been rolled over.

Second, other statutes expressly permit some officials to “carry over vacation leave to the following year” in some circumstances. R.C. 124.13(D). This shows that the General Assembly knows how to permit carryover when that is what it means to do. *See Gabbard v. Madison Local School Dist. Bd. of Edn.*, Slip Opinion No. 2021-Ohio-2067, ¶ 25; *Columbus Check Cashers, Inc. v. Rodgers*, 2008-Ohio-5498, ¶ 14 (10th Dist.). Its silence on carryover in R.C. 1901.12(A) thus implies that carryover is not permitted. “The statute says what it says—or perhaps better put here, does not say what it does not say.” *Cyan, Inc. v. Beaver Cty. Emples. Retirement Fund*, ___U.S.___, 138 S.Ct. 1061, 1069, 200 L.Ed.2d 332 (2018).

Third, statutes protecting public funds must be strictly construed in favor of the public. *CIT Group/Equip. Financing, Inc. v. Brown Cty.*, 2014-Ohio-5489, 25 N.E.3d 473, ¶ 26 (12th Dist.); *Aquatic Renovations Sys. v. Village of Walbridge*, 2018-Ohio-1430, 110 N.E.3d 877, ¶24 (6th Dist.); *Cado Business Sys. of Ohio v. Bd. of Edn.*, 8 Ohio App.3d 385, 389, 457 N.E.2d 939 (8th Dist.1983). Thus, the fact that R.C. 1901.12 does not expressly permit the rollover of paid vacation days suggests that it prohibits rollover. Indeed, permitting rollover, without a limit, would allow for an exceptional abuse of the public fisc: a judge who served for just ten years, and who took ten days of vacation a year, would be entitled to 200 days of vacation. It is hard to believe that the General Assembly would have created a system in which judges could take paid vacation for so significant a period of time during a single year. If possible, statutes should not be read to create such “unreasonable or absurd consequences.” *Columbia*

Gas Transm. Corp. v. Levin, 117 Ohio St.3d 122, 128, 2008-Ohio-511, ¶ 35, 882 N.E.2d 400, 409.

Finally, all this is consistent with an earlier opinion issued by one of my predecessors. My predecessor determined that R.C. 1901.12 “does not authorize payment to a judge for any vacation leave to which he is entitled but does not use.” 1990 Op. Att’y Gen. No. 004, 2-13. He reached that conclusion based on the fact that “[n]othing in R.C. 1901.12 authorizes payment to be made to a judge who does not use the full vacation leave to which he is entitled.” *Id.* at 2-14. Similarly here, nothing in R.C. 1901.12 authorizes the rollover of vacation days. Therefore, applying my predecessor’s logic, rollover is not permitted.

Accordingly, it is my opinion, and you are hereby advised that:

R.C. 1901.12 does not permit municipal-court judges to rollover unused vacation days to future years.

Respectfully,



DAVE YOST
Ohio Attorney General