

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

1988 Op. Att'y Gen. No. 88-089 was limited by  
2000 Op. Att'y Gen. No. 2000-001.

## Syllabus:

1. Notwithstanding the language of R.C. 9.44 referring to the anniversary date of employment for the purpose of computing the amount of vacation leave to which an employee is entitled, a county employee's anniversary date of employment has no relevance in determining the amount of prior service credit to which the county employee is entitled for purposes of vacation leave benefits granted by R.C. 325.19.
2. For purposes of determining the amount of vacation benefits to which a county employee is entitled under R.C. 325.19, prior service credit is given for time spent as an officer or employee with the state, a county, or other political subdivision, as allowed by R.C. 325.19 and R.C. 9.44.
3. Except for a person initially employed by a county on or after July 5, 1987, a county employee is entitled to receive service credit pursuant to R.C. 325.19 for prior service with a county or any political subdivision of the state, and, pursuant to R.C. 9.44(A), for prior service with the state or any political subdivision, for purposes of calculating the amount of his vacation benefits under R.C. 325.19; a person who is initially employed by a county on or after July 5, 1987, however, is limited by R.C. 9.44(B)(2) to receiving such service credit only for prior service with a county. (1985 Op. Att'y Gen. No. 85-093; 1984 Op. Att'y Gen. No. 84-055; and 1977 Op. Att'y Gen. No. 77-009, limited.)

To: Philip J. Brumbaugh, Darke County Prosecuting Attorney, Greenville, Ohio  
 By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1988

I have before me your opinion request concerning vacation benefits for county employees. You specifically ask:

1. In determining the prior public service to calculate the vacation credits due to a current public employee, is the actual and specific anniversary date of the prior service to be used, or is the duration in time of such prior service to be used?
2. Does R.C. 9.44(B)(2), providing that only prior service with a county is to be counted in determining vacation credits, prevail over those portions of R.C. 325.19 granting vacation leave based upon length of service with the county or any political subdivision of the State?
3. Does the phrase "\*\*\*\*initially employed on or after July 5, 1987\*\*\*\*" as found in R.C. 9.44(B) refer to the beginning of a public employee's current employment or does it refer to the beginning date of his prior public employment?

Your first question concerns the calculation of vacation benefits for county employees. R.C. 325.19 establishes vacation leave benefits to which county employees generally are entitled. I note, however, that where a county appointing authority is empowered to fix the compensation of its employees, it may increase the benefits prescribed by R.C. 325.19. *Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984). Further, vacation leave benefits, as a form of compensation for services rendered, are a matter subject to collective bargaining under R.C. Chapter 4117. 1985 Op. Att'y Gen. No. 85-102 n. 1 at 2-435 to 2-436. Since your opinion request does not mention the possible variations from the statutory scheme governing vacation leave for county employees, I will limit my discussion to the provisions of R.C. 325.19 and the related provisions of R.C. 9.44.

Concerning vacation leave for county employees generally, R.C. 325.19 states in part:

(A) 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. One year of service shall be computed on the basis of twenty-six biweekly pay periods. A full-time county employee with eight or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay....Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period for those entitled to eighty hours per year [and] four and six-tenths hours each biweekly period for those entitled to one hundred twenty hours per year....

....  
 (C) ...*Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment*; provided, the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than three years. 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.)

Your first question concerns the meaning of the term "anniversary date of employment" and its relevance in determining the amount of vacation leave to which a county employee is entitled under R.C. 325.19. It is, therefore, necessary to examine R.C. 9.44 which states in pertinent part:

(A) *Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have his prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of his vacation leave. The anniversary date of his employment for the purpose of computing the amount of his vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.*

(B) To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:

....  
 (2) A county, the person shall have only his prior service with a county counted....

As will be discussed more fully below, R.C. 9.44(A) thus establishes a scheme, subject to the exceptions set forth in R.C. 9.44(B), for the employees enumerated in R.C. 9.44(A) to receive credit for periods of prior service with the state or any political subdivision of the state in calculating the amount of vacation benefits due such employees. R.C. 9.44(A) defines such an employee's anniversary date of employment, with certain exceptions, as, "the anniversary date of such prior service"; this definition is provided expressly "for the purpose of computing the amount of his vacation leave." R.C. 9.44(A) (emphasis added).

Pursuant to R.C. 325.19, however, an employee's anniversary date of employment is no longer used "for the purpose of computing the amount of his vacation leave" (emphasis added), as specified in R.C. 9.44(A).<sup>1</sup> Rather, an

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<sup>1</sup> Prior to its amendment in 1974 Ohio Laws, Part II, 334 (Am. S.B. 408, eff. July 22, 1974), R.C. 325.19 provided for the crediting of vacation leave to each employee "upon each successive annual recurrence of the

employee's anniversary date of employment is used as a limitation upon the time within which he may use his annual vacation benefits or as the date from which to measure the amount of unused vacation leave for which he may receive compensation. R.C. 325.19(C).

The amount of vacation leave to which a full-time county employee is entitled under R.C. 325.19(A) varies, depending upon the number of years of prior service which he has to his credit. *See generally* R.C. 325.19(A) (stating, in part: "One year of service shall be computed on the basis of twenty-six biweekly pay periods"); 1982 Op. Att'y Gen. No. 82-093 (syllabus, paragraph one) ("[p]ursuant to R.C. 325.19, a full-time county employee is entitled to accrue vacation leave at the rates of four and six-tenths hours, six and two-tenths hours, and seven and seven-tenths hours each biweekly period upon completion of the eighth, fifteenth, and twenty-fifth years of service, respectively"). Concerning the nature of service for which a county employee is entitled to receive prior service credit generally, one of my predecessors stated:

Although it is true that there is no specific statutory definition of "county service" and that R.C. 325.19 has specific application only to county employees, Chapter 124 of the Revised Code which deals with the civil service system of the State defines 'civil service' as including "all offices and positions of trust or employment in the service of the state and the counties,\*\*\*." R.C. 124.01(A). I think it clear, therefore, that both the officers of a county and the employees thereof are included in the "county service." Cf. Opinion No. 66-149, Opinions of the Attorney General for 1966, in which my predecessor said that "it would seem that the General Assembly intended the broadest coverage legally permissible for Section 325.19, Revised Code."

1974 Op. Att'y Gen. No. 74-085 at 2-353. Thus service credit under R.C. 9.44 or R.C. 325.19 is given for time spent with an appropriate public entity, as determined by those sections, as either an officer or an employee. No service credit is given for those periods of time following a person's commencement of service where the person is not serving as such an officer or employee. *See generally* 1983 Op. Att'y Gen. No. 83-019 (syllabus). Notwithstanding the language of R.C. 9.44 referring to an employee's anniversary date of employment for purposes of computing the amount of vacation leave to which he is entitled, a county employee's anniversary date of employment has no relevance in determining the amount of prior service credit to which he is entitled for purposes of vacation leave benefits granted under R.C. 325.19.

Your second question asks: "Does R.C. 9.44(B)(2), providing that only prior service with a county is to be counted in determining vacation credits, prevail over those portions of R.C. 325.19 granting vacation leave based upon length of service with the county or any political subdivision of the State?" Your third question asks: "Does the phrase '\*\*\*initially employed on or after July 5, 1987\*\*\*' as found in R.C. 9.44(B) refer to the beginning of a public employee's current employment or does it refer to the beginning date of his prior public employment?" Since both questions concern the operation of R.C. 9.44(B), I will address them together.

Pursuant to R.C. 9.44(A), as set forth above, a person who is employed, other than as an elected officer, by the state or any political subdivision and who is currently earning vacation credits is entitled to receive credit for prior service with any of these employers for purposes of computing the amount of his vacation leave, except as may otherwise be provided in R.C. 9.44. Further provision is made in R.C. 9.44(A), except as may otherwise be provided in R.C. 9.44, for the anniversary date of such an employee's prior service to be used as the anniversary date of his employment for the purpose of computing the amount of his vacation leave. R.C.

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anniversary date of his employment; provided, the anniversary date may be deferred because of periods of time which the employee is not in active pay status." 1973 Ohio Laws, Part I, 782 (Am. S.B. 177, eff. Dec. 17, 1973).

9.44(B), however, establishes certain exceptions to the general provisions set forth in R.C. 9.44(A). Division (B), added to R.C. 9.44 in Am. Sub. H.B. 178, 117th Gen. A. (1987) (eff. June 24, 1987), states:

*(B) To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:*

*(1) A state agency in which the employees' salaries or wages are paid directly by warrant of the auditor of state, except for persons employed pursuant to [R.C. 3301.13 and 3333.03] who are not public employees under [R.C. 4117.01(C)], the person shall have only his prior service with state agencies in which employees' salaries or wages are paid directly by warrant of the auditor of state counted;*

*(2) A county, the person shall have only his prior service with a county counted;*

*(3) A municipal corporation, the person shall have only his prior service with that municipal corporation counted; and*

*(4) A township, the person shall have only his prior service with a township counted. (Emphasis added.)*

Thus, pursuant to R.C. 9.44(B)(2), a person who is employed by a county for the first time on or after July 5, 1987, is entitled to receive prior service credit only for prior service with a county in computing the amount of vacation leave to which he is entitled. *See generally* 1980 Op. Att'y Gen. No. 80-057 at 2-227 ("county service' as used in R.C. 325.19 includes time spent as a county officer as well as time spent as a county employee").

Your third question asks whether a person's initial employment on or after July 5, 1987, for purposes of R.C. 9.44(B), refers to the date on which the person began his current position of employment or the date on which the person commenced any prior position of public employment. R.C. 9.44(B) states: "for a person initially employed on or after July 5, 1987, by" one of the four types of public entities listed in R.C. 9.44(B)(1)-(4), credit will be given only for prior service with the entities as specified in the pertinent subdivision. R.C. 9.44(B) thus provides an exception to the service credit provisions set forth in R.C. 9.44(A) only for persons whose initial employment with one of the four types of public entities listed in R.C. 9.44(B) occurs on or after July 5, 1987.

Concerning the provisions of R.C. 9.44(B), you specifically ask about a person who was employed by your county on May 31, 1988, after having been employed by a school district for two and one-half years. Since the person about whom you ask was first employed by a county after July 5, 1987, she is entitled to receive prior service credit under R.C. 9.44(B)(2), for the purpose of computing the amount of vacation leave to which she is entitled, only for that time spent in the service of the county. R.C. 9.44 does not, therefore, entitle her to receive two and one-half years of prior service credit for the time spent as an employee of a school district.

As stated in your second question, however, the provisions of R.C. 9.44(B)(2) appear to conflict with that portion of R.C. 325.19(A) which allows county employees to receive credit for prior service "with the county or any political subdivision of the state." In attempting to ascertain the legislative intent in enacting these separate statutory provisions which relate to the same subject and which appear to be in conflict, one may apply the following principles of statutory construction:

The presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject. Therefore acts upon the same subject are to be construed as a whole with reference to an entire system of which all are parts. The presumption being against indirect repeal, the courts will endeavor to harmonize the several parts, and where the statute has made no exception the courts will make none, nor where exceptions are made will they be carried further, in the absence of direct language, than the spirit of the law requires. An enlarged meaning, beyond the import of the words, will not be given to one act in order to repeal another by implication. It is

not sufficient that the subsequent statute covers some of the cases provided for by the former; there must be positive repugnancy; and even then the old is repealed only to the extent of the repugnancy. If, by fair and reasonable interpretation, acts which are seemingly incompatible or contradictory may be enforced and made to operate in harmony, and without absurdity, both will be upheld, and the later one will not be regarded as repealing the former by construction or intendment. (Citations omitted.)

*Eggleston v. Harrison*, 61 Ohio St. 397, 404-05, 55 N.E. 993, 996 (1900). Thus, two statutes relating to the same subject should be harmonized to the extent possible in order to give effect to both statutes.

Applying the principles of statutory interpretation set forth in *Eggleston*, I note that R.C. 325.19(A) and R.C. 9.44 appear to conflict only with respect to subdivision (B)(2) of R.C. 9.44; both statutory provisions may be given effect, however, simply by reading R.C. 9.44(B)(2) as an exception to the prior service credit provisions of R.C. 325.19.<sup>2</sup> Thus, except for a person employed initially by a county on or after July 5, 1987, a county employee who is entitled to receive vacation benefits under R.C. 325.19 is allowed prior service credit for periods of time served with the state under R.C. 9.44(A) and with any political subdivision of the state under R.C. 9.44 and R.C. 325.19(A).<sup>3</sup> A person who is employed initially by a county on or after July 5, 1987, however, is limited by R.C. 9.44(B)(2) to receiving service credit for purposes of R.C. 325.19 only for prior time served with a county.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Notwithstanding the language of R.C. 9.44 referring to the anniversary date of employment for the purpose of computing the amount of vacation leave to which an employee is entitled, a county employee's anniversary date of employment has no relevance in determining the amount of prior service credit to which the county employee is entitled for purposes of vacation leave benefits granted by R.C. 325.19.

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<sup>2</sup> In this regard, I note that prior to its amendment in Am. Sub. H.B. 178, 117th Gen. A. (1987) (eff. June 24, 1987), R.C. 9.44 contained essentially those provisions now contained in division (A) of R.C. 9.44, without the language of divisions (B) and (C) of the statute as it currently reads. Prior opinions have consistently read the portion of former R.C. 9.44 authorizing service credit for prior service with the state or any political subdivision as complementary to, and not in conflict with, R.C. 325.19, which allows prior service credit only for prior service with the county or any other political subdivision of the state. *See, e.g.*, 1982 Op. Att'y Gen. No. 82-064; 1981 Op. Att'y Gen. No. 81-066.

<sup>3</sup> As discussed in note 2, *supra*, until June 24, 1987, "in addition to the prior service credit authorized by R.C. 325.19, R.C. 9.44 permits a county employee, who is earning vacation credits currently, to include prior service with the state or any political subdivision of the state in calculating the amount of vacation benefits to which he is entitled." 1985 Op. Att'y Gen. No. 85-093 at 2-393 (citation omitted). As discussed above, however, the provisions of R.C. 9.44(B)(2) operate as an exception to the general service credit provisions set forth in R.C. 9.44(A) with respect to county employees who are currently earning vacation credits. Similar issues with regard to the operation of R.C. 9.44 in conjunction with R.C. 325.19 were addressed in 1984 Op. Att'y Gen. No. 84-055 and 1977 Op. Att'y Gen. No. 77-009. All three opinions were issued prior to the amendment of R.C. 9.44 in Am. Sub. H.B. 178. Based on the provisions of R.C. 9.44(B)(2), I must, therefore, limit the conclusions reached in Op. No. 85-093, Op. No. 84-055 and Op. No. 77-009 to the extent that they are inconsistent with the analysis of R.C. 325.19 and R.C. 9.44 set forth herein.

2. For purposes of determining the amount of vacation benefits to which a county employee is entitled under R.C. 325.19, prior service credit is given for time spent as an officer or employee with the state, a county or other political subdivision, as allowed by R.C. 325.19 and R.C. 9.44.
  
3. Except for a person initially employed by a county on or after July 5, 1987, a county employee is entitled to receive service credit pursuant to R.C. 325.19 for prior service with a county or any political subdivision of the state, and, pursuant to R.C. 9.44(A), for prior service with the state or any political subdivision, for purposes of calculating the amount of his vacation benefits under R.C. 325.19; a person who is initially employed by a county on or after July 5, 1987, however, is limited by R.C. 9.44(B)(2) to receiving such service credit only for prior service with a county. (1985 Op. Att'y Gen. No. 85-093; 1984 Op. Att'y Gen. No. 84-055; and 1977 Op. Att'y Gen. No. 77-009, limited.)