

**OPINION NO. 1057****Syllabus:**

1. Boards of education cannot deduct from sick leave of an employee accumulated under Section 143.29, Revised Code, time lost because of the observance of religious holidays.

2. Boards of education, by appropriate rule or regulation adopted pursuant to Section 3313.21, Revised Code, may authorize leave with pay for absence of full-time employees, not on an hourly rate of pay, for observance of religious faith.

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To: E.E. Holt, Superintendent of Public Instruction, Department of Education, Columbus, Ohio

By: William B. Saxbe, Attorney General, May 18, 1964

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

"A City Board of Education has a policy which provides that:

"'An employee may be absent from duty without loss of pay for not more than three days in a given school year, when total abstinence from work is required for the observance of his religious faith. A leave of absence request shall be filed at least one week in advance with the building principal or department head, and the absence shall be charged against sick leave.'

"Can a City, Local or Exempted Village Board of Education lawfully adopt and implement the above stated policy?"

It is appropriate to note at the outset that boards of education are creatures of statute and have only such authority as is clearly defined or necessarily implied from such statutes. See Verberz v. Board of Education, 135 Ohio St., 246, and Board of Education v. Best, 52 Ohio St., 138.

Section 143.29, Revised Code, establishes sick leave of one and one-fourth days per month for all full-time employees. This section states, in pertinent part:

"Each full-time employee, whose salary or wage is paid in whole or in part by the state, and each full-time employee in the various offices of the county service and municipal service, and each full-time employee of any board of education, shall be entitled for each completed month of service to sick leave of one day, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness or death in the employee's immediate family.\* \* \*Provisional appointees or those who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted full-time employees.\* \* \*"

This section has been held applicable to employees of boards of education. Opinion No. 1605, Opinions of the Attorney General for 1950, page 173. The specific purposes for which sick leave can be used are set forth in Section 143.29, supra. Observance of religious faith is not mentioned therein. I conclude, therefore, that time off for observance of religious faith can not be properly charged against sick leave accumulated under provisions of Section 143.29, Revised Code.

Section 3313.21, Revised Code, states:

"All full-time employees of a board of education, except those employed on hourly rates, must be paid regular compensation for time lost, due to illness or otherwise, for not less than five days annually as authorized by regulations which each board shall adopt." (Emphasis added)

The words "or otherwise" as used in Section 3313.21, supra, have not been defined by statute or by the courts. I am of the opinion, however, that boards of education can, under this broad language, provide by appropriate regulation for time off with pay for full-time employees -- except those employed at hourly rates -- absent because of the observance of religious faith.

In answer to your specific question, it is my opinion and you are advised:

1. Boards of education cannot deduct from sick leave of an employee accumulated under Section 143.29, Revised Code, time lost because of the observance of religious holidays.
2. Boards of education, by appropriate rule or regulation adopted pursuant to Section 3313.21, Revised Code, may authorize leave with pay for absence of full-time employees, not on an hourly rate of pay, for observance of religious faith.