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EMPLOYEE, STATE—ADDITIONAL SERVICE, SICK LEAVE CREDIT—§143.29 R.C.—RATE OF SICK LEAVE ACCUMULATION NOT ACCELERATED BY OVERTIME WORK.

SYLLABUS:

1. A public employee, who in addition to his regular duties performs part time additional service for his employer, is entitled to pay under the provision of Section 143.29, Revised Code, for the time lost by illness up to the limit of his sick leave credit, and such payment should be in the same amount which he would have received if he had been at work during the period of his illness.

2. Sick leave credit may be obtained by a public employee mentioned in Section 143.29, Revised Code, at the rate of one and one-fourth days per month of active service, and that rate of accumulation will not be accelerated by the fact that the employee does overtime work in addition to his regular hours of service.

Columbus, Ohio, May 19, 1958

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

I have before me your communication in which you request my opinion, your letter reading as follows:

“The sick leave statute, Section 143.29 of the Revised Code, provides for the accumulation of sick leave of  $1\frac{1}{4}$  work days per month with pay. In many of our school districts teachers and other employees are engaged in overtime work. For example, a teacher may have a regular assignment to teach in the day school and then have a regular assignment to teach in the evening school. The day school work week is Mondays through Fridays but the evening school classes may be only one, two or three nights per week.

“A question has arisen as to what is a working day when a person is absent by reason of illness. Are we to compute the regular work day and the evening class hours along with the regular work day when the teacher is absent by reason of illness on a day in which teaching would be done both during the day and in the evening hours.

“Janitors and certain other employees work overtime and in the course of the year accumulate considerable overtime hours. In computing and paying sick leave for absence due to illness, must such overtime work be taken into consideration in determining the amount of pay such an employee is to receive. I might point out that the statute expressly states that they are to accumulate sick leave credits at the rate of  $1\frac{1}{4}$  *working* days. Since an 8 hour day is considered as a working day, shall the overtime be taken into consideration in computing the pay for absence due to illness or shall the employing agency pay only the regular day's salary or wage.”

Your communication really presents two questions, (1) the rate at which an employee should be compensated for days on which he is absent on account of illness, and (2) the basis on which sick leave should accumulate where an employee is working overtime.

Section 143.29, Revised Code, reads as follows:

“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 and one-fourth work days with pay*. Employees may use sick leave, 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. Unused sick leave shall be cumulative up to *ninety work days*, unless more than ninety days are approved by the responsible administrative officer of the employing unit. \* \* \* 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 shall be uniformly administered as to employees in each agency of the state government. \* \* \*" (Emphasis added)

It seems plain that the purpose of this provision in the law is to save an employee from the loss of his compensation when he is prevented by illness or other circumstances mentioned in the statute from doing his daily work. Accordingly, in the case which you recite, a teacher may be entitled to his regular annual salary for his regular work and in addition thereto a stipulated agreed amount for overtime work. It would therefore appear that if he is absent from work on account of illness for one or more days he should be paid for those days the same as if he were on duty, *provided* he has to his credit a sufficient accumulation of sick leave credit to cover the period of his absence. The precise amount of this compensation for overtime credit during that period may not be absolutely fixed, as this overtime work may not be constant, but it would appear to be within the sound discretion of the board of education to determine it with reasonable certainty.

The statute provides that unused sick leave shall be cumulative up to ninety days, unless more than ninety days are approved by the responsible administrative officer of the employing unit. If it is not so extended, then it becomes a fixed limitation, and the right of an employee to enjoy the benefit of the statute may be lost because he has exhausted his sick leave credit.

For the purpose of accumulating this credit, it appears to me that the matter of earnings and overtime service has no part in the computation. The statute permits this accumulation on the basis of *months and days*, without any reference to the length of the day. It accumulates at the rate

of one and one quarter days per month or fifteen days in a year, and certainly no overtime service could add more than the regular number of calendar days to a month, or change one and a quarter days into two. The fallacy of undertaking to inject into the ascertainment of this credit anything other than the mere passage of the days would be further suggested by the provision of the law that the previously accumulated sick leave of an employee, who has been separated from the public service, may be placed to his credit upon his re-employment in the public service, and the further provision that an employee who transfers from one public agency to another shall be credited with the unused balance of the accumulated sick leave.

Manifestly this accumulation of sick leave credit might be drawn on in a second employment where the salary or wage is either much larger or much smaller than that which was enjoyed at the time of its accumulation.

Accordingly, and in specific answer to your questions, it is my opinion :

1. A public employee, who in addition to his regular duties performs part time additional service for his employer, is entitled to pay under the provision of Section 143.29, Revised Code, for the time lost by illness up to the limit of his sick leave credit, and such payment should be in the same amount which he would have received if he had been at work during the period of his illness.

2. Sick leave credit may be obtained by a public employee mentioned in Section 143.29, Revised Code, at the rate of one and one-fourth days per month of active service, and that rate of accumulation will not be accelerated by the fact that the employee does overtime work in addition to his regular hours of service.

Respectfully,

WILLIAM SAXBE  
Attorney General