

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

1961 Op. Att'y Gen. No. 61-2021 was overruled in part  
by 1981 Op. Att'y Gen. No. 81-001.

2021

COUNTY EMPLOYEE MAY ACCUMULATE VACATION LEAVE EARNED, BUT NOT USED DURING HIS COUNTY SERVICE, AND THE PAYMENT OF SUCH EARNED BUT UNUSED VACATION LEAVE TO AN EMPLOYEE UPON SEPARATION SHOULD BE AT HIS CURRENT RATE OF PAY—§325.19, R.C.

SYLLABUS:

Pursuant to Section 325.19, Revised Code, a county employee may accumulate vacation leave earned, but not used during his county service, and the payment of such earned but unused vacation leave to an employee upon separation should be at his current rate of pay.

Columbus, Ohio, February 24, 1961

Hon. Stanley E. Kolb, Prosecuting Attorney  
Warren County, Lebanon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under Section 325.19 of the Ohio Revised Code, should a person whose employment with the county has been terminated

receive earned but unused vacation leave pay based on the salary received at the termination of employment or the salary when the vacation leave was accumulated?"

As your request refers to vacation leave which was "accumulated," it appears necessary to first determine what leave may be accumulated. Section 325.19, Revised Code, here pertinent, provides :

"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, *shall be entitled during each year thereafter*, to two calendar weeks, excluding legal holidays, of vacation leave with full pay. Employees having fifteen or more years of county service *are entitled, during each year thereafter*, to three calendar weeks, excluding legal holidays, of vacation leave with full pay. Two calendar weeks of leave with pay *will have been earned and will be due* an employee upon attainment of the first anniversary of employment and annually thereafter, and three calendar weeks of leave with pay *will have been earned and will be due* an employee upon attainment of the fifteenth anniversary of employment and annually thereafter. The annual leave during any one calendar year may be extended to include unused vacation leave of previous years provided the total leave taken in any one year shall not exceed six weeks. *An employee shall be entitled to compensation for the pro-rated portion of any earned but unused vacation leave to his credit at time of separation.*

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"In the case of the death of a county employee, the unused vacation leave and unpaid overtime to the credit of any such employee, shall be paid in accordance with section 2113.04 of the Revised Code, or to his estate." (Emphasis added)

In considering similar language in the statute pertaining to vacation leave for state employees, Section 121.161, Revised Code, I stated in my Opinion No. 1575, Opinions of the Attorney General for 1960, issued on July 25, 1960 :

"Where the section previously did not contain a provision for an extra money payment to an employee in the event he should fail to take his vacation, it presently specifically provides that an employee upon separation, is entitled to compensation for *any* earned, but unused vacation leave. The section further states that 'two calendar weeks of leave with pay *will have been earned and will be due* an employee upon attainment of the first anniversary of employment *and annually thereafter*, and three calendar weeks of leave with pay *will have been earned and will be*

*due* an employee upon attainment of the fifteenth anniversary of employment *and annually thereafter.*' Thus, under the present law, there is specific authority for an accumulation of leave over a period of years in the case of employees who fail 'during each year' to avail themselves of the privilege of leave with full pay."

Section 325.19, *supra*, does contain a sentence which is not found in Section 121.161, *supra*. That is the sentence reading :

"The annual leave during any one calendar year may be extended to include unused vacation leave of previous years provided the total leave taken in any one year shall not exceed six weeks."

While it might be argued that this sentence provides the only way that unused vacation leave may be taken, I believe that the entire section must be considered in determining its effect. In view of the definite language that certain weeks of vacation pay "have been earned and will be due" an employee upon attainment of the first anniversary of employment and annually thereafter, I am of the opinion that unused vacation leave may be accumulated; and am of the further opinion that the sentence above referred to applies to the method of taking unused vacation leave *while the employee is still in the employment of the county*, but does not apply to vacation leave due when the employee is separated.

Strengthening my conclusion in this regard is the language of the last paragraph of Section 325.19, *supra*, which provides for payment for *unused vacation leave* of a deceased county employee.

The reference to "pro-rated portion of any earned but unused vacation leave" in Section 325.19, *supra*, also might cause some confusion on the question of accumulated vacation leave. Here again, however, this reference must be read as a part of the entire section to ascertain its meaning, and I believe that in using this language the intent was to give the employee vacation credit for the current year where he had worked only a part of that year.

Coming to your specific question, Section 325.19, *supra*, allows for "vacation leave with full pay." Thus, a person on a certain payroll who takes a vacation, is given time off but is not taken off the payroll. Accordingly, an employee receiving earned but unused vacation leave upon separation from service, is actually being given time off without being taken off the payroll, and should be paid for such leave at the current rate of pay.

In conclusion, therefore, it is my opinion and you are advised that pursuant to Section 325.19, Revised Code, a county employee may accumulate vacation leave earned, but not used during his county service, and the payment of such earned but unused vacation leave to an employee upon separation should be at his current rate of pay.

Respectfully,

MARK McELROY  
Attorney General