OPINION NO. 74-088

Syllabus:

R.C. 9.44 imposes a mandatory duty upon a municipal corporation to give to its employees vacation credit for periods of employment with the state or another political subdivision of the state.

To: Paul H. Mitrovich, Lake County Pros. Atty., Painesville, Ohio
By: William J. Brown, Attorney General, October 22, 1974

Your request for my opinion reads as follows:

> "I request from your office an opinion concerning whether or not Section 9.44 of the Ohio Revised Code imposes a mandatory duty upon a chartered municipal corporation to give to one of its firemen vacation credit for time spent working for another political subdivision in the same capacity. We have done some research into the matter and are submitting our memorandum of law for your scrutiny."

The Section of the Revised Code to which you refer was enacted as H.B. 202, which became effective on August 27, 1970. It reads as follows:

> "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." (Emphasis added.)

There is no general statutory definition of a "political subdivision", although several statutes do define the term for specific purposes. See, for example, R.C. 9.82, R.C. 3501.01(P), and R.C. 5915.01(F). However, several opinions of recent attorneys general, as well as court cases, have attempted to assign a general definition to this term. In Opinion No. 72-035, Opinions of the Attorney General for 1972, I concluded that a political subdivision of the state is a limited geographical area wherein a public agency is authorized to exercise some governmental function. This would necessarily include a municipal corporation.

In addition I would refer you to the Legislative Service Commission's analysis of H.B. 202, which included the following comment:

> "The language of the bill allows coverage, for example, of employees of the state, counties, townships, municipal corporations, boards of education, and special districts (e.g. health, conservancy districts)."

While not conclusive as to legislative intent such interpretations have been relied on by the courts to buttress other authority for a particular construction. I.J.J. Canteen Corp. v. Porterfield, 30 Ohio St. 2d 155 (1972); Weiss v. Porterfield, 27 Ohio St. 2d 117 (1971). It appears clear, therefore, that the General Assembly intended to include municipal corporations as "political subdivisions" for purposes of R.C. 9.44. Therefore, a fireman employed by a municipal corporation would be entitled to have prior employment with the state or another political subdivision of the state, as a fireman or in any other capacity, counted as service with his current employer for the purpose of computing vacation leave.

It has been suggested, however, that such a requirement would conflict with Article XVIII, Section 3, Ohio Constitution, which provides:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

It has been held that police and fire protection, as well as the establishment of pay scale classifications for employees, are a local, as opposed to statewide, concern. State, ex rel. Mullin v. Mansfield, 26 Ohio St. 2d 129 (1971); Leavers v. City of Canton, 1 Ohio St. 2d 33 (1964); State, ex rel. Canada v. Phillips, 168 Ohio St. 191 (1958). It should be noted, however, that the statute in question does not affect a municipal corporation's discretion in promulgating police and fire regulations, or in establishing civil service rules for recruiting competent personnel. It merely provides that when such personnel are hired by a municipal corporation, or by the state or another political subdivision, the new employer must recognize, for the purpose of accumulating vacation credits, any prior service with the state or political subdivisions of the state.

The power of local self-government granted to muncipalities by Article XVIII, Section 3, supra, relates solely to the government and administration of the internal affairs of the municipality. Village of Beachwood v. Board of Elections, 167 Ohio St. 369 (1958). See also Opinion No. 73-039, Opinion No. 73-098, Opinion No. 73-113, and Opinion No. 73-121, Opinions of the Attorney General for 1973. On this point I would refer you to Britt v. Columbus, 38 Ohio St. 2d 1 (1974), in which the Supreme Court reaffirmed the rule, enunciated in Village of Beachwood v. Board of Elections, supra, for distinguishing areas of local self-government from matters of statewide concern:

> "To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extra-territorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly."

The issue of reciprocity of vacation credits among the various public employers in the state is by its nature a matter of statewide concern, since a decision to recognize or deny accrued vacation rights for transferring employees would affect the mobility of public employees throughout the state. It follows that the enactment of R.C. 9.44 to insure reciprocity does not conflict with a municipal corporation's authority under Article XVIII, Section 3, to exercise all powers of local self-government, but rather is a proper subject for legislation by the General Assembly. Since the General Assembly has exercised its au-

thority to enact general legislation covering vacation credits, a municipal ordinance refusing to grant such credits would conflict with general state law rather than complement it. Cleveland v. Raffa, 13 Ohio St. 2d 112 (1968); Opinion No. 73-098, supra. The present statute is similar in nature to R.C. 742.26 by which the General Assembly abolished certain firemen's pension plans and preempted the field with a statewide plan. See Opinion No. 71-023, Opinions of the Attorney General for 1971, which discusses the relationship between Cincinnati v. Gamble, 138 Ohio St. 220 (1941) and State, ex rel. Canada v. Phillips, 168 Ohio St. 191 (1958).

In specific answer to your question it is my opinion, and you are so advised that R.C. 9.44 imposes a mandatory duty upon a municipal corporation to give to its employees vacation credit for periods of employment with the state or another political subdivision of the state.