

OPINION NO. 83-006**Syllabus:**

A full-time state employee who was a member of the Ohio Defense Corps or the Ohio Naval Militia, attending armory drills once a month and participating in such other training as prescribed, is entitled to

March 1983

one year prior service credit for each year of service with the Ohio Defense Corps or the Ohio Naval Militia for the purpose of computing the amount of vacation leave to which he is entitled under R.C. 124.13.

To: Major General Raymond R. Galloway, Adjutant General, Worthington, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 10, 1983

I have before me your predecessor's opinion request which asks:

Is a full-time state employee who was a member of the Ohio Defense Corps and Ohio Naval Militia in a cadre basis attending armory drills once a month and such other training as prescribed, entitled to one year prior service credit for each year of service with the Ohio Defense Corps and the Ohio Naval Militia for the purpose of computing the amount of his vacation leave pursuant to Ohio Revised Code 121.161?

In the request, your predecessor refers to 1981 Op. Att'y Gen. No. 81-066, which concluded that, in computing prior service credit under R.C. 121.161¹ for time served with the Ohio National Guard, a full-time state employee is entitled to a full year of service credit for each year in which he was on duty as a Guard member one weekend per month and two full weeks during the year. I believe that the analysis set forth in that opinion resolves your predecessor's question.

Pursuant to R.C. 124.13, which governs vacation leave benefits for state employees, the amount of vacation leave to which an employee is entitled depends upon the employee's years of service with the state or any political subdivision of the state. Additionally, I note that R.C. 9.44 entitles employees of the state or any political subdivision of the state, earning vacation credits currently, to service credit for prior service with the state or any political subdivision of the state. Thus, if service with the Ohio Defense Corps or the Ohio Naval Militia, like service with the Ohio National Guard, is considered state service, a full time state employee is entitled to credit for such service in computing his vacation benefits under R.C. 121.161.

The civil service is defined as including "all offices and positions of trust or employment in the service of the state." R.C. 124.01(A). Pursuant to R.C. 124.11(A)(6), the unclassified service includes "[a]ll commissioned and uncommissioned officers and enlisted men in the military service of the state." The Ohio Naval Militia and the Ohio Defense Corps are expressly included as part of the militia of the state, and are also included as part of the "military forces." R.C. 5923.01. It is clear, therefore, that persons who serve in the Ohio Defense Corps or the Ohio Naval Militia are in service with the state for such periods.

In Op. No. 81-066 my predecessor concluded that a member of the Ohio National Guard who is on duty only one weekend per month and two full weeks per year is entitled to a full year of state service for purposes of R.C. 121.161 (now R.C. 124.13). The opinion reasoned that since a National Guardsman enlists for a period of years and is subject to call at any time, his service time cannot be determined by looking at a specific number of hours in a particular activity, as is generally the case with state employees. In order to determine the amount of service credit to which a full-time state employee is entitled for service in the Ohio Naval Militia or the Ohio Defense Corps, it is, therefore, necessary to examine the service obligations required by those organizations.

Pursuant to R.C. 5923.03, the Ohio Defense Corps consists of "the militia who are more than seventeen years of age and regularly enlisted therein, and of officers between the ages of eighteen and sixty-seven years regularly commissioned therein or assigned thereto." Persons who enlist in the Ohio Defense Corps sign an

¹ In Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff., in pertinent part, Nov. 26, 1982), the General Assembly amended former R.C. 121.161 and renumbered it as R.C. 124.13.

enlistment contract and take and subscribe to an oath of enlistment, which states that the term of enlistment is "for a period of three years," R.C. 5920.08, subject to discharge at anytime, R.C. 5920.11. The period of enlistment is thus stated in terms of years. R.C. 5920.08.² Commissioned officers are appointed by the governor. R.C. 5923.04. The oath of such officers does not contain a statement of the period for which such commission is made, R.C. 5920.07, and the governor may accept an officer's resignation at anytime, R.C. 5920.11. Further, an officer's commission may be vacated under certain circumstances. R.C. 5920.11. However, the statutes establishing the service obligations of Ohio Defense Corps members make no distinction, except as noted above, between enlisted men and officers.

You state that members of the Ohio Defense Corps attend armory drills once a month and participate in "such other training as prescribed." In addition to such required duty, the Ohio Defense Corps, as part of the organized militia, R.C. 5923.01, is subject to call by the governor "to suppress or prevent riot or insurrection, or to repel or prevent invasion," R.C. 5923.21. Ohio Const. art. IX, §4 further provides that "[t]he governor shall have power to call forth the militia, to execute the laws of the state, to suppress insurrection, to repel invasion, and to act in the event of a disaster within the state." Like National Guardsmen, members of the Ohio Defense Corps are, thus, subject to call at any time.

Pursuant to R.C. 5921.01, the Ohio Naval Militia is established to provide naval forces which may be "expanded and trained to defend this state whenever the Ohio national guard, or a part thereof, is employed so as to leave this state without adequate defense, and whenever necessary to assist and maintain the public peace in case of a disaster or emergency as determined by the governor." Like the Ohio National Guard, the Ohio Naval Militia consists of:

the militia regularly enlisted therein, transferred or assigned thereto under the laws and regulations of the United States, and of the officers and warrant officers regularly commissioned and warranted therein or assigned thereto, as shall be prescribed by the department of defense for. . .the naval militia.

R.C. 5923.03.

Persons enlist in the Ohio Naval Militia for a period of three years, R.C. 5921.05, subject to discharge at any time, R.C. 5921.13. Commissioned and warrant officers of the Ohio Naval Militia are chosen, commissioned and take rank in the same manner as provided for the Ohio National Guard. R.C. 5921.04. Pursuant to R.C. 5921.13 the governor may accept the resignation of any commissioned officer or warrant officer at any time, and such officers' warrants or commissions may be vacated under the circumstances set forth in that section.

While serving in the Ohio Naval Militia, as either an officer or enlisted man, however, such person is required to assemble for drill and instruction at such times and places and during such periods of time as prescribed by the governor. R.C. 5921.07. In accordance with such requirement, as stated in your predecessor's letter, persons in the Ohio Naval Militia, like members of the Ohio Defense Corps, attend drills once a month, in addition to participating in other prescribed training. Pursuant to R.C. 5923.21, all members of the Ohio Naval Militia, as part of the organized militia, are subject to the call of the governor at any time to help suppress or prevent riot or insurrection or to repel or prevent invasion. See Ohio Const. art. IX, §4.

It appears, therefore, that service with the Ohio Defense Corps or the Ohio Naval Militia, like service with the Ohio National Guard, is not capable of being broken down into hours of particular activities, as is the case generally with state employees, and must, therefore, be computed in terms of years. I also note that

² Although R.C. 5920.01 authorizes the commander in chief to fix lesser rates of pay for armory drill purposes or for service in encampments and maneuvers during the period of organization on a cadre or reserve basis, such distinction does not alter the fact that persons performing such duties are still in service with the Ohio Defense Corps.

your predecessor's question specifically refers to persons serving on a cadre basis. Although both R.C. 5920.01 and R.C. 5921.01 speak of organizing and maintaining the Ohio Defense Corps and the Ohio Naval Militia, respectively, on a cadre or reserve basis, the statutes do not provide for any difference in the nature of service depending upon which basis is employed.

Based on the foregoing, it is my opinion, and you are advised, that a full-time state employee who was a member of the Ohio Defense Corps or the Ohio Naval Militia, attending armory drills once a month and participating in such other training as prescribed, is entitled to one year prior service credit for each year of service with the Ohio Defense Corps or the Ohio Naval Militia for the purpose of computing the amount of vacation leave to which he is entitled under R.C. 124.13.