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1. VACATION WITH PAY—UNDER SECTION 2394-4a G. C. EACH EMPLOYE OF SEVERAL COUNTIES OF STATE ENTITLED TO VACATION.
2. THE STATUTE APPLIES TO ALL COUNTIES OF STATE WHETHER OR NOT COUNTY HAS CIVIL SERVICE COMMISSION OR ANY COUNTY CIVIL SERVICE EMPLOYEES.
3. PART TIME OR INCIDENTAL EMPLOYE OF COUNTY— TO RECEIVE BENEFITS OF STATUTE— MUST WORK DURING CALENDAR YEAR SUFFICIENT LENGTH OF TIME TO QUALIFY FOR ONE DAY VACATION WITH PAY.

SYLLABUS:

1. Under General Code Section 2394-4a each employe of the several counties of the state, regardless in which office or department of the county he is employed, is entitled to vacation with pay in accordance with the provisions of said section.

2. General Code Section 2394-4a applies to all counties of the state, whether or not the county has a county civil service commission or any county civil service employes.

3. In order for a "part time" or "incidental" employe of the county to be entitled to the benefits of Section 2394-4a he must work during the calendar year at least a sufficient length of time to qualify for a one day vacation with pay.

Columbus, Ohio, June 9, 1949

Hon. James R. Freemas, Prosecuting Attorney
Vinton County, McArthur, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested to obtain an opinion concerning G. C. 2394-4a which reads as follows:

'Each employee in the several offices and departments of the county service shall be entitled during each calendar year beginning January first, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees who have less than one year of service, shall be entitled to one working day vacation leave with full pay for each month of service during said calendar year.

'In the case of a county employee working on a per diem basis, one day vacation shall be granted for each twenty-four days worked by such employee; and in the case of an employee working on an hourly basis, one day vacation leave shall be granted for each one hundred and ninety-two hours worked by such employee; provided, however, that the total vacation leave of such per diem or hourly employees shall not exceed the total vacation leave provided herein for other county employees.'

"Is each county employee of whatever office or department entitled to vacation pay?"

"Does this apply only to counties having counties' civil service commissions and employees under the rules of those commissions?"

"Does this section apply to part time or incidental employees as well as to full time employees?"

"Vinton County doesn't have a Civil Service Commission or any County Civil Service employees. How is it affected by said law?"

Section 2394-4a of the General Code, which you quote in full and which is in issue here, was enacted by the 97th General Assembly and became effective September 8, 1947. While there do not appear to have been any court decisions construing this section, this is the third instance I have been called upon to render an opinion concerning its meaning and scope. You may be interested in one of these, viz., Opinion No. 528, dated May 20, 1949, in which I discuss the method of computation provided for in Section 2394-4a. A copy of this opinion is enclosed.

I shall attempt to answer your questions in the order you ask them. It appears that the answer to your first question is contained in the introductory clause of Section 2394-4a. It is seen that the provisions of the section apply to "Each employee in the several offices and departments of the county service * * *." In view of the clear language used, I can see no alternative to answering your first question in the affirmative.

You next ask whether or not the section applies only to counties having civil service commissions and employees under the rules of such commissions. In answer to this question, I should like to refer to Section 2394-4 and the title of the bill which provided for the enactment of Section 2394-4a. You will note that the title of said bill read as follows: "An Act to supplement section 2394-4 of the General Code by

the enactment of supplemental section 2394-4a relative to vacations of county employees." See 122 v. 238. It is apparent that the two sections should be read together. Section 2394-4 provides as follows:

"The electors of any county may establish, by charter provision, a county civil service commission, personnel office, or personnel department. In any county which, by its charter, creates such a commission, office, or department and provides a system for appointment to the county service on the basis of merit and fitness as ascertained in so far as practicable by competitive examination, the provisions of sections 486-1 to 486-31, inclusive, of the General Code shall not be operative; but the state civil service commission shall have the same powers and duties with respect to all county civil service commissions, personnel offices, and personnel departments as it may possess with reference to municipal civil service commissions."

I should like to point out that this section simply authorizes a county to establish a county civil service commission, and that no distinction is made between counties which utilize this authorization and those which do not. In view of this, and since no distinction is made in Section 2394-4a between counties having civil service commissions and those with no such commission, it appears reasonable to conclude that said section applies to all counties of the State of Ohio.

Your third question presents a difficult problem. In the absence of more precise information concerning who are included as "part time" and "incidental" employees, I must limit my answer to the language of the statute. I am reluctant to exclude any group of employees, as such, from the benefits of Section 2394-4a.

One approach to the problem would be to interpret the word "employee" in the manner indicated by the following quotation from Daub, et al. v. Maryland Casualty Company, 148 S. W. (2nd) 58, 60:

"The word 'employee,' which is the correlative of employer, is commonly used as signifying continuous service, or as designating a person who gives his whole time and services to another for a financial consideration, or as designating a person who performs services for another for a financial consideration, exclusive of casual employment, or a person in constant and continuous service, or a person having some permanent employment or position, or a person who renders regular and continued services, not limited to a particular transaction, or a person having a fixed tenure or position. * * *"

However, considering the purpose of the legislation and the growing awareness that a person's compensation for services rendered should include a minimum paid vacation each year, I am inclined to the view that the General Assembly intended the broadest coverage legally permissible for Section 2394-4a. I think that this position is adequately supported by the precise language used. Note that the legislation applies to "Each employee * * * of the county service"; also that a method of computation is set forth for each possible type of employment basis, per annum, per diem and hourly. See, 1938 Opinions of the Attorney General 2251 and 1942 Opinions of the Attorney General 732, where discussion was had of whether or not certain persons were "state employees" as defined in the Public Employees Retirement Act. Note especially the following conclusion drawn in the 1942 Opinion, at page 731-2, from the fact that specific exemption was made for employees engaged in work of a temporary, casual or exceptional nature:

"Attention is particularly called to that provision of the above quoted section which gives the board authority 'to exempt from compulsory membership in the retirement system, classes or groups of employes engaged in work of a *temporary, casual or exceptional nature.*' The fact that the Legislature thought it necessary to make this provision indicates that it regarded the word 'employe' as all inclusive."

Perhaps I should hasten to add that I am not of the opinion that every person receiving a pay check from the county, regardless of period or terms of employment, is entitled to receive a paid vacation under Section 2394-4a. It is clear that the section contains certain standards concerning length of employment which must be met before a county employee may claim or receive a vacation with pay. What I have in mind is the fact that with respect to each category of employees vacation time is computed approximately on the basis of one day vacation for each month of service. To me, this indicates a legislative intention that the privileges of the section should be limited to persons who qualify for at least a one day vacation under the terms of the section. In other words, a county employee employed on a per diem basis must have worked a minimum of 24 days during the calendar year in order to receive any of the benefits of the section; and an employee retained on an hourly basis must have worked 192 hours during the period. Therefore, in answer to your second question, I am of the opinion that in order

for a "part time" or "incidental" county employee to be entitled to the benefits of Section 2394-4a he must have worked at least a sufficient length of time to qualify for a one day vacation with pay.

As your final question you call attention to the fact that Vinton County has neither a civil service commission nor any civil service employees, and inquire whether or not this makes any difference under the law. I believe that this question has been answered above.

To summarize, I should like to set forth the conclusions which I have come to in answer to your questions:

1. Under General Code Section 2394-4a each employee of the several counties of the state, regardless in which office or department of the county he is employed, is entitled to vacation with pay in accordance with the provisions of said section.
2. General Code Section 2394-4a applies to all counties of the state, whether or not the county has a county civil service commission or any county civil service employees.
3. In order for a "part time" or "incidental" employee of the county to be entitled to the benefits of Section 2394-4a he must work during the calendar year at least a sufficient length of time to qualify for a one day vacation with pay.

Respectfully,

HERBERT S. DUFFY,
Attorney General.