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A PERSON SERVING AS CLERK OF A BOARD OF COUNTY COMMISSIONERS WHO IS APPOINTED COUNTY TREASURER IS ENTITLED TO COMPENSATION FOR ANY EARNED VACATION LEAVE—§325.19, R.C.

SYLLABUS:

Where a person serving as clerk of a board of county commissioners leaves that position to accept appointment to the office of county treasurer, such person is entitled under Section 325.19, Revised Code, to compensation for any earned but unused vacation leave to his credit at the time of separation.

Columbus, Ohio, November 14, 1962

Hon. Everett Burton, Prosecuting Attorney
Scioto County Court House, Portsmouth, Ohio

Dear Sir:

I have received your request for my opinion on the question whether a clerk of a board of county commissioners who is appointed to the office of county treasurer is entitled to compensation for unused vacation leave accumulated while serving as clerk.

Section 325.19, Revised Code, provides, in part, as follows:

“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. * * *”

As you suggest in your letter, the answer to your question depends upon whether leaving the position of clerk of the board of county commissioners to accept appointments to the office of county treasurer constitutes a “separation” within the meaning of this section.

It appears to me clear that the intent behind the section above quoted must be deemed to be that an employee shall not lose the benefit of vacation time earned but not taken when he leaves the position in which he earned it. This being the case, I am constrained to conclude that a “separation” in this context is any change in position wherein the employee would not be able to carry over earned vacation credit to the new position.

In the situation about which you ask, the new position is that of county treasurer, an elective office (Section 321.01, Revised Code). The office of treasurer being an elective county office, a person serving in that office would not be entitled to vacation as an “employee in (one of) the several offices and departments of the county” under Section 325.19, *supra*. (Opinion No. 3239, Opinions of the Attorney General for 1962, issued on August 30, 1962). Furthermore, a search of the code reveals no other section which would allow carry over of prior earned vacation time to the credit of a county treasurer while he held such office. I must conclude, therefore, that when a county employee leaves his position and accepts appointment to the office of county treasurer there is no way in

which earned, but unused, vacation credit could be carried over into the new office and, consequently, such a change must be deemed a "separation" within the meaning of Section 325.19, Revised Code, and the employee in question is entitled to any earned but unused vacation leave to his credit at time of separation.

It is my opinion, therefore, and you are advised that where a person serving as clerk of a board of county commissioners leaves that position to accept appointment to the office of county treasurer, such person is entitled under Section 325.19, Revised Code, to compensation for any earned but unused vacation leave to his credit at the time of separation.

Respectfully,
MARK MCELROY
Attorney General