

Note from the Attorney General's Office:

1977 Op. Att'y Gen. No. 77-009 was limited by
1988 Op. Att'y Gen. No. 88-089.

OPINION NO. 77-009

Syllabus:

Prior service with the Ohio National Guard, as either an officer or enlisted man, must, pursuant to R.C. 9.44, be included as past service with the county in computing a county employee's vacation leave under R.C. 325.19.

To: John J. Plough, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, March 3, 1977

I have before me your request for my opinion which reads as follows:

"The Portage County Coroner has encountered difficulty in determining the length of service of an employee for the purpose of computing the vacation to which the employee is entitled under ORC 325.19. The employee in question served five years in the Ohio National Guard prior to employment by Portage County. Our opinion request is as follows:

"Should time spent in the Ohio National Guard prior to employment by the county be counted as 'service. . . with the county or any political subdivision of the state' in computing the amount of vacation to which the county employee is now entitled under ORC Section 325.19?"

R.C. 325.19, to which you refer in your request, states in part:

"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 with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay." (Emphasis added.)

Your question then is whether time spent in the Ohio National Guard may be considered as service with the county or a political subdivision of the state.

A county is itself a political subdivision of the state, and the term "political subdivision" has been the subject of discussion in an earlier opinion issued by this office. In 1972 Op. Att'y Gen. No. 72-035 I addressed the issue of what constitutes a political subdivision. I defined it as follows:

"A political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental func-

tion, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority."

See also 1974 Op. Att'y Gen. No. 74-088. The National Guard of Ohio, which is provided for in R.C. Title 59, does not by its nature fall within the scope of "political subdivision" as that term is defined above. Therefore, R.C. 325.19 does not require that time spent in the Ohio National Guard be considered in determining an employee's eligibility for vacation.

R.C. 9.44 provides, however, additional authority for reciprocity among various public employers in determining time in service for purposes of computing vacation leave. That section reads:

"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.)

Under this provision a county employee may also count service as an employee of the state in determining eligibility for vacation leave. It must, therefore, be determined whether service with the National Guard may be treated as employment and service with the state for purposes of R.C. 9.44.

In 1975 Op. Att'y Gen. No. 75-025 I had occasion to consider whether R.C. 9.44 provided credit for past service as a state officer as well as a state employee. While an officer would not accrue vacation leave while in office, I noted that he was nevertheless in the "public service" and that his years of service as an officer could, therefore, be used in computing vacation leave. This rationale had been enunciated earlier in 1974 Op. Att'y Gen. No. 74-085, in which I considered the same issue as it affected county officers. In that opinion I observed that R.C. 124.01 (A) defines "civil service" as including "all offices and positions of trust and employment in the service of the state and the counties. . . ."

With respect to members of the Ohio National Guard it is significant then that R.C. 124.01 reads in part as follows:

"The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not

be included in the classified service, and which shall be exempt from all examinations required by this chapter.

". . . .

"(6) All commissioned and noncommissioned officers and enlisted men in the military service of the state including military appointees in the office of the adjutant general;"

It follows from a reading of the above that members of the Ohio National Guard, both officers and enlisted men, are in the service of the state and, consistent with Ops. No. 74-085 and 75-025, supra, fall within the scope of R.C. 9.44.

Therefore, in answer to your question, it is my opinion and you are so advised that prior service with the Ohio National Guard, as either an officer or enlisted man, must, pursuant to R.C. 9.44, be included as past service with the county in computing a county employee's vacation leave under R.C. 325.19.