

**OPINION NO. 75-094****Syllabus:**

In computing length of service for purposes of vacation leave a state employee must pursuant to R.C. 9.44 be given credit for prior service as an administrator or faculty member of a state supported university.

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**To: Richard L. Krabach, Director, Ohio Dept. of Administrative Services,  
Columbus, Ohio**

**By: William J. Brown, Attorney General, December 30, 1975**

Your request for my opinion reads as follows:

"I request your opinion as to whether or not length of service credit should be given to a state employee, for prior service as an administrator or faculty member of a state supported university, for purposes of computing vacation. In the past, these employees have been treated as contract employees, whose service time was not credited.

"The specific question concerns an individual currently employed as a physician at a state institution, who is claiming service credit for the period of time in which he was employed as a faculty member at Ohio University."

The pertinent statute is R.C. 9.44 which states that:

"A person employed, other than as an elective officer, by the state or any other 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."

The issue then is whether a person's past employment as a faculty member of a state supported university may be characterized as "prior service" with the state as that term is used in R.C. 9.44.

As you have noted, faculty members usually work pursuant to contracts of employment, and as such may be distinguished from the majority of employees in the service of the state. In an

earlier opinion I had occasion to consider and discuss the nature of a faculty member's employment. In 1973 Op. Att'y Gen. No. 73-020, I observed that the General Assembly has pursuant to statute vested the government of state universities in the boards of trustees. With respect to a member of the faculty, I noted that because of the extent of the trustee's authority to control the operation of their institutions, and because of the nature of a professor's duties, questions relating to workweeks and vacations are necessarily matters within the discretion of the board of trustees.

It does not follow, however, that a faculty member is not employed in the service of the state. On this point I would refer you to 1973 Op. Att'y Gen. No. 73-038, in which I characterized such faculty members as "contract employees" of the university. Furthermore, there appears little question that employment or service with a state university is state service. See 1972 Op. Att'y Gen. No. 72-004.

With respect to R.C. 9.44, there is nothing in that section which defines the term "prior service" to exclude service pursuant to an employment contract. In this regard I have in recent opinions interpreted the term "prior service" broadly to include service as an officer of the state or a political subdivision, even though as an officer an individual was not eligible for vacation leave under the civil service laws. 1975 Op. Att'y Gen. No. 75-025; 1974 Op. Att'y Gen. No. 74-085.

These situations are analogous to the present case. While the nature of a faculty member's employment (i.e. pursuant to employment contract) is such as to except him from statutory vacation provisions applicable to civil service employees, he is nevertheless employed in the service of the state. It follows that pursuant to R.C. 9.44 such time must be included in computing amount of service for purposes of vacation.

In specific answer to your questions it is, therefore, my opinion and you are so advised that in computing length of service for purposes of vacation leave a state employee must pursuant to R.C. 9.44 be given credit for prior service as an administrator or faculty member of a state supported university.