

OPINION NO. 82-073**Syllabus:**

Pursuant to R.C. 125.21 the Department of Administrative Services may correct its payroll records by placing the appropriate service credit and the corresponding additional vacation benefits to the credit of those state employees who have not been receiving service credit for time spent in the Ohio National Guard.

To: William D. Kelp, Director, Ohio Department of Administrative Services, Columbus, Ohio

By: William J. Brown, Attorney General, September 28, 1982

I have before me your opinion request in which you ask whether the Department of Administrative Services may credit certain state employees with vacation benefits previously earned but as yet uncredited. By way of background you state that it had been the policy of your department, in computing state employees' vacation benefits under R.C. 121.161, not to allow such employees service credit for time served in the Ohio National Guard. In 1981 Op. Att'y Gen. No. 81-066, however, I concluded that a full-time state employee is entitled to service credit for time served in the Ohio National Guard for the purpose of computing his vacation leave pursuant to R.C. 121.161. As a result of this opinion you have determined that certain state employees have been entitled to more service credit than has been reflected in their employment records, and, accordingly, those employees may have been entitled to more vacation benefits than they have been receiving. You ask, therefore, whether the Department may now correct the records of those employees affected by Op. No. 81-066, and credit them with the vacation to which they were entitled but never received.

In *State ex rel. Bossa v. Giles*, 64 Ohio St. 2d 273, 415 N.E.2d 256 (1980), the court found that the administrator of the Bureau of Employment Services was under a clear legal duty to credit a former employee with vacation benefits to which she was entitled as a full-time state employee, even though the Bureau considered her an "intermittent" employee. It is clear, therefore, that where a state employee has not received vacation benefits as prescribed by R.C. 121.161, the appointing authority must credit him with such benefits.¹

I note, however, that pursuant to R.C. 125.21 it is the Department of Administrative Services, rather than the appointing authority, which has the duty of preparing payroll journals and vouchers for the payment of state employees. The director of the Department is specifically required to "furnish to the auditor of state all necessary data for processing state employee pay warrants and preparing earning statements." R.C. 125.21. A necessary part of keeping payroll journals, processing pay warrants and preparing earning statements is maintaining an accurate record of each employee's vacation benefits. Since R.C. 125.21 requires the Department to keep such records, implicit in that direction is the authority to

¹R.C. 121.161 contains a three year limitation upon the carry-over of accumulated vacation benefits. This limitation, however, must be viewed as part of the scheme set forth in the statute for the accumulation and use of vacation leave. Since the vacation benefits in the situation you present have not accumulated according to the statutory scheme, I do not believe that the three year limitation set forth in R.C. 121.161 in any way restricts the employees' right to this additional leave.

make necessary corrections in those records. See State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by . . . a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed"). R.C. 125.21 does not set forth a method for correcting errors in employee payroll records. The Department is, therefore, authorized to use any reasonable means to make the necessary corrections. See Jewett v. Valley Ry. Co., 34 Ohio St. 601 (1878).

Based on the foregoing, it is my opinion, and you are advised, that pursuant to R.C. 125.21 the Department of Administrative Services may correct its payroll records by placing the appropriate service credit and the corresponding additional vacation benefits to the credit of those state employees who have not been receiving service credit for time spent in the Ohio National Guard.