

**OPINION NO. 83-074****Syllabus:**

1. Where an individual transfers from employment in one county to a position of employment in another county, R.C. 124.38 entitles him to transfer to his new employment the sick leave accumulated in his former employment up to the maximum of sick leave accumulation permitted in the position to which he transfers.
2. Where an individual transfers from employment in one county to a position of employment in another county, such a change in employment constitutes a separation for purposes of R.C. 325.19. Pursuant to R.C. 325.19, an employee is entitled to payment by the county at the time of separation for vacation leave accumulated but unused during the period of employment with that county. The county to which such employee transfers has no obligation to credit the employee with such vacation benefits. (1981 Op. Att'y Gen. No. 81-001, syllabus, paragraph one, approved and followed.)

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**To: W. Allen Wolfe, Muskingum County Prosecuting Attorney, Zanesville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 2, 1983**

December 1983

I have before me your opinion request in which you ask about the transfer of vacation and sick leave accumulated by an employee of a juvenile court when such employee transfers to employment in the juvenile court of another county.

R.C. 124.38 establishes minimum sick leave for those public employees "in the various offices of the county, municipal, and civil service township service, each employee of any state college or university, and each employee of any board of education for whom sick leave is not provided by [R.C. 3319.141]." In order to qualify for sick leave benefits under R.C. 124.38, a juvenile court employee must be in the service of a county, a municipality, a civil service township, a state college or university, or a board of education. I note, however, that some question exists as to whether juvenile court employees are merely employees of the juvenile court or whether they may be considered county employees, at least for purposes of accruing vacation and sick leave.

Pursuant to R.C. 2151.07, a juvenile court is established as a court of record within the court of common pleas in each county. The county has various responsibilities with regard to the juvenile court. For example, the funding of the juvenile court is provided by the county in which the court is located. R.C. 2151.10.<sup>1</sup> Further, the board of county commissioners is authorized to provide a juvenile court building to be furnished and maintained for the convenience and efficiency of the court, R.C. 307.02, R.C. 2151.09, and has a duty to provide a separate hearing room in certain instances, R.C. 2151.24. I note that, the juvenile court has been considered, at least for some purposes, a county body. See State ex rel. Clarke v. Board of County Commissioners, 141 Ohio St. 16, 46 N.E.2d 410 (1943) (refers to the juvenile court as a branch of county government for purposes of G.C. 1639-57 (currently at R.C. 2151.10)); 1964 Op. Att'y Gen. No. 760, p. 2-3 (syllabus, paragraph one) (pursuant to R.C. 325.20, which authorizes the board of county commissioners to allow county officers and employees to attend meetings at county expense, the board may make an allowance for the expenses of a juvenile judge in attending certain bar association meetings and conventions).

Specifically concerning juvenile court employees, R.C. 2151.13 states, in part:

The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. . . . Such employees shall serve during the pleasure of the judge.

The compensation and expenses of all employees and the salary and expenses of the judge shall be paid in semimonthly installments by the county treasurer from the money appropriated for the operation of the court, upon the warrant of the county auditor, certified to by the judge.

Thus, although court employees are appointed by and serve during the pleasure of the juvenile judge, they are paid by the county treasurer upon warrant of the county auditor from money appropriated by the county for the operation of the court. See generally R.C. 124.11 (places certain employees of courts of record, including the juvenile court, R.C. 2151.07, within the unclassified service of "the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof"). See also 1939 Op. Att'y Gen. No. 1123, vol. II, p. 1642. Because of the manner in which the juvenile court is funded and the manner in which court employees are compensated, I believe that juvenile court employees are county employees for purposes of accruing sick leave under R.C. 124.38.

Pursuant to R.C. 124.38, the employees of the various agencies set forth in that section:

<sup>1</sup> In State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph three), the Supreme Court found R.C. 2151.10, which makes the appropriation to the juvenile court discretionary with the county commissioners, to be an impermissible legislative encroachment upon the inherent powers of the judiciary and declared the statute unconstitutional.

shall be entitled for each completed eighty hours of service to sick leave of four and six-ter.ths hours with pay. . . . Unused sick leave shall be cumulative without limit . . . . An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers. (Emphasis added.)

In the situation about which you ask, the employee is transferring from county employment in one county to county employment in a different county. Since employment in both positions is county employment for purposes of R.C. 124.38, that statute entitles the employee to transfer to his new employment the sick leave which he accumulated in his former position, up to the maximum accumulation permitted in the position to which he transfers. See 1960 Op. Att'y Gen. No. 1302, p. 298; 1954 Op. Att'y Gen. No. 3643, p. 128.

You also ask whether the county in which the person is currently employed must honor the vacation benefits accumulated by the employee during employment with another county. Vacation leave for county employees is governed by R.C. 325.19. For the reasons set forth above, I believe that a juvenile court employee is entitled to the vacation benefits established by R.C. 325.19 for county employees. See 1981 Op. Att'y Gen. No. 81-001 (employee of probate court is entitled to vacation leave pursuant to R.C. 325.19).

Concerning the use and transfer of vacation leave by county employees, R.C. 325.19(C) states, in pertinent part:

Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment; provided, the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than three years. An employee is entitled to compensation, at his current rate of pay, for the pro-rated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment. (Emphasis added.)

Pursuant to this statute, an employee is entitled to payment for accumulated unused vacation leave at the time of separation from employment. 1980 Op. Att'y Gen. No. 80-057. There is no provision, like that contained in R.C. 124.38, that entitles an employee who transfers from one public agency to another to carry over unused vacation leave.

In Op. No. 81-001 my predecessor considered the meaning of "separation," as that term is used in R.C. 325.19. That opinion concerned an employee who was transferring from a position of employment with one county appointing authority to a position with another appointing authority within the same county. The opinion concluded that such change in employment constitutes a "separation" for purposes of R.C. 325.19. From that conclusion it follows that a change in employment from one county to another must also constitute a separation, as that term is used in R.C. 325.19. In the situation you pose, payment for accumulated unused vacation leave is the obligation of the county in which the employee accumulated such leave. See Op. No. 81-001. The county in which such employee becomes subsequently employed, therefore, has no obligation to credit the employee with such unused vacation leave accrued in employment with a different county.

Based on the foregoing, it is my opinion, and you are advised, that:

1. Where an individual transfers from employment in one county to a position of employment in another county, R.C. 124.38 entitles

him to transfer to his new employment the sick leave accumulated in his former employment up to the maximum of sick leave accumulation permitted in the position to which he transfers.

2. Where an individual transfers from employment in one county to a position of employment in another county, such a change in employment constitutes a separation for purposes of R.C. 325.19. Pursuant to R.C. 325.19, an employee is entitled to payment by the county at the time of separation for vacation leave accumulated but unused during the period of employment with that county. The county to which such employee transfers has no obligation to credit the employee with such vacation benefits. (1981 Op. Att'y Gen. No. 81-001, syllabus, paragraph one, approved and followed.)