

OPINION NO. 66-120**Syllabus:**

In defining whether a current full-time employee has ten or twenty-five years of service for vacation purposes, credit should be given for periods of service which were part-time, and credit should be given for periods of service which were full-time but were seasonal or irregular during the course of the year.

To: Wayne Ward, Director, Ohio Department of Personnel, Columbus, Ohio
By: William B. Saxbe, Attorney General, July 13, 1966

I am in receipt of your request for my opinion which reads as follows:

"Your opinion is respectfully requested on certain questions arising from the interpretation of sections 121.161 and 325.19, of the Ohio Revised Code.

"These sections provide vacation benefits for State and County employees. In general, employees are given two weeks of vacation after service of one year, three weeks after ten years, and four weeks after twenty-five years. These benefits are applicable to employees who, at the time of drawing vacation benefits, are full-time employees. Full-time employment has generally been taken to mean a 40-hour week for State employees and an approximation to the standard for County employees. While vacation benefits are now given only to full-time employees, there have been periods when the law provided vacation benefits for part-time employees as well.

"My question is as follows. In defining whether an employee has ten or twenty-five years of service for vacation purposes, what credit, if any, should be given for periods of service which was part-

time rather than full-time, and what credit should be given for periods of service which were full-time but were seasonal or irregular during the course of the year."

Section 121.161, Revised Code, to which you refer in your request letter, applies to state employees and states in pertinent part as follows:

"Each full-time state employee, including full-time hourly-rate employees, after service of one year with the state, is entitled, during each year thereafter, to eighty hours of vacation leave with full pay. A full-time employee with ten or more years of service with the state is entitled to one hundred twenty hours of vacation leave with full pay. A full time employee with twenty-five or more years of service with the state is entitled to one-hundred-sixty hours of vacation leave with full pay. Such vacation leave shall accrue to the employee upon each successive annual recurrence of the anniversary date of his employment;
* * *"

Section 325.19, Revised Code, which applies to county employees provides for the same vacation benefits.

Your opinion request letter is unclear on one point. This point is what is the hypothetical employee's present employment status. I must assume that the employee is presently working full-time due to the fact that both Sections 121.161, supra, and 325.19, supra, apply only to full-time employees.

Proceeding under this basic assumption which I believe to be a fair one from a review of your request letter, the determination must be made as to whether periods of part-time or intermittent service can be tacked on to an employee's full-time service in order to determine years of service for vacation purposes. It is my opinion that this part-time and full-time but intermittent service can be added to an employee's full-time service in arriving at a determination of whether or not an employee has ten or twenty-five years of service.

Section 121.161, supra, and Section 325.19, supra, only require that an employee be presently a full-time employee with ten or twenty-five years of service to receive one hundred and twenty hours or one-hundred-sixty hours of vacation. There is no requirement in either of these sections that he need always have been a full-time employee. The critical term in both statutes is "years of service",

and from a reading of both this term and the statutes as a whole no other conclusion can be reached than that these "years of service" can be rendered as either a part-time or full-time employee. To reach any other conclusion would require reading the term "years of service" as actually meaning "years of full-time service". If the Legislature had intended to limit the accrual of vacation benefits to periods of full-time service, they could easily have done so by inserting the word "full-time" in front of the word "service".

You point out in your request letter that while the present policy is to give vacation benefits only to full-time employees, there have been periods when the law provided vacation benefits for part-time employees. However, the present policy has no material bearing or relevancy on the question of whether previous periods of part-time or intermittent service can be included in calculating a current full-time employee's years of service for vacation benefits.

It is therefore my opinion and you are accordingly advised that in defining whether a current full-time employee has ten or twenty-five years of service for vacation purposes, credit should be given for periods of service which were part-time, and credit should be given for periods of service which were full-time but were seasonal or irregular during the course of the year.