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BOARD OF EDUCATION OF A CITY SCHOOL DISTRICT MAY APPROVE THE ACCUMULATION OF MORE THAN NINETY DAYS SICK LEAVE FOR EMPLOYEES OF SUCH DISTRICT; WHEN TRANSFERRED TO ANOTHER PUBLIC AGENCY SAID EMPLOYEE SHOULD BE CREDITED WITH THE UNUSED BALANCE OF ACCUMULATED SICK LEAVE—§143.29, R.C.

SYLLABUS:

Under the provisions of Section 143.29, Revised Code, the board of education of a city school district may, at its discretion, approve the accumulation of more than ninety days sick leave for all of the employees of such district; and where such an employee transfers to another public agency, he should be credited with the unused balance of his accumulated sick leave.

Columbus, Ohio, March 23, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A recent audit of a city school district disclosed the board of education had, by resolution, extended the amount of sick leave an employee was permitted to accumulate from the 90 days authorized by the provisions of Section 143.29, Revised Code, to 100 days with the allowable accumulated sick leave applying equally to all employees of the school district.

"Section 143.29, Revised Code, provides that unused sick leave shall be cumulative up to 90 work days unless more than 90 days are approved by the responsible administrative officer of the employing unit. Said section also provides that an employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave.

"It has been a regulatory measure of this office that any sick leave over and above the 90 days provided by Section 143.29, Revised Code, must have the approval of the administrative officer in each particular instance.

"We are unable to find any specific authority which would permit a board of education of a city school district, by resolution, to extend the 90 day limitation as set forth in Section 143.29, Revised Code, and that any exception to the 90 day limitation would require administrative approval in each specific instance, but we are aware of no authority permitting such an extension in sick leave time to apply equally to all employees coming thereunder as a matter of privilege or right. The application of accumulated sick leave time in a manner which may be considered to be less than uniform would seem to permit the use of sick leave time to a greater extent in certain divisions and levels of the government as against others.

"It would appear that an inequitable condition would exist if an employee of a city school district with an allowable 100 day accumulated sick leave would transfer to some other division of government in which the 90 day limitation prevailed. Will you please give consideration to the foregoing and advise with regard to the following questions.

- “1. May the board of education of a city school district authorize, by resolution, as a matter of right a permissible amount of accumulated sick leave greater than the limitation provided by Section 143.29, Revised Code?”
- “2. If the board of education of a city school district may authorize allowable accumulative sick leave in excess of the amount provided by Section 143.29, Revised Code, what amount of unused sick leave should be considered when an employee transfers to another governmental agency of the state?”

“A formal opinion is requested at an early date.”

Section 143.29, Revised Code, provides in part as follows :

“* * * Unused sick leave shall be cumulative up to ninety work days, unless more than ninety days are approved by the responsible administrative officer of the employing unit. The previously accumulated sick leave of an employee who has been separated from the public service may be placed to his credit upon his re-employment in the public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave. * * * This section shall be uniformly administered as to employees in each agency of the state government.

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In Opinion No. 3643, Opinions of the Attorney General for 1954, page 128, one of my predecessors after quoting Section 143.29, *supra*, stated at pages 130 and 131 as follows :

“* * * It is to be observed that the statute gives the administrative head certain discretion both in the use of sick leave and in extending it beyond ninety days, and it seems reasonable to conclude that the state departments are to be held to a uniform administration even though the counties, municipalities and school boards might indulge in varying practices.”

At page 133 in Opinion No. 3643, *supra*, we find the following statement :

“In view of the manifest meaning of ‘public agency,’ which we have already discussed, it would appear that an employe who has either left the county service and later returned thereto, or has come into the county service after accumulating sick leave credit in service with any of the public agencies named in the statute, is entitled to have the benefit of such accumulated credit, and that the county must bear whatever burden is entailed in paying his salary or wage when he is absent on sick leave credit so accumulated.

“If this appears to be an unfair burden, it must be remembered that a county is a creature of the statute, organized by the General Assembly pursuant to the authority of Section 1 of Article X of the Constitution. And it is well settled that as such it is charged with such duties and endowed with such powers as the General Assembly has seen fit to prescribe.”

In the six years since my predecessor issued Opinion No. 3643, *supra*, the legislature has met three times, but it has not amended Section 143.29, *supra*. If there are “varying practices” and “unfair burdens” in the operation of Section 143.29, *supra*, then the legislature has had ample time to correct them. It is my opinion, therefore, that the board of education may approve the accumulation of more than 90 days sick leave even though the practice of approving such accumulation varies from the practice of other governmental agencies and would seem to permit the use of sick leave time to a greater extent in certain divisions of government. Furthermore, it is my opinion, in the absence of anything in Section 143.29, *supra*, requiring the board of education to review each individual employee’s accumulation of sick leave before granting approval to accumulate more than 90 days sick leave, that the board of education has discretion in determining the method of granting such approval, i.e., general approval for all employees or specific approval for individual employees. In this regard, your attention is directed to paragraph two of the syllabus of *Brannon v. The Board of Education*, 99 Ohio St., 369, reading as follows:

“2. A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine.”

Your attention is also directed to paragraph one of the syllabus in *Greco v. Roper*, 145 Ohio St., 243, reading as follows:

“1. Under the statutes of Ohio, a board of education is charged with the management and control of the public schools in its district and is vested with authority to make such rules and regulations as it deems necessary for its government and the government of its employees.”

Regarding your second question concerning the amount of unused sick leave which should be considered when an employee transfers to another governmental agency, Section 143.29, *supra*, expressly provides that “an employee who transfers from one public agency to another shall

be credited with the unused balance of his accumulated sick leave.” (Emphasis added) It is obvious that the “balance” referred to in Section 143.29, *supra*, is whatever amount the employee had theretofore lawfully accumulated regardless of the fact that such accumulated amount of sick leave may exceed 90 days.

Accordingly, it is my opinion and you are advised that under the provisions of Section 143.29, Revised Code, the board of education of a city school district may, at its discretion, approve the accumulation of more than ninety days sick leave for all of the employees of such district; and where such an employee transfers to another public agency, he should be credited with the unused balance of his accumulated sick leave.

Respectfully,

MARK McELROY

Attorney General