

OPINION NO. 85-075

Syllabus:

An employee who is accumulating sick leave benefits pursuant to R.C. 124.382 may not, pursuant to that statute, transfer to his current employment credit for sick leave benefits that were accumulated in the service of a public library established under R.C. Chapter 3375.

To: Richard M. Cheski, State Librarian, The State Library of Ohio, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1985

I have before me your request for my opinion as to whether an employee of the State Library of Ohio is entitled to credit for the unused balance of his sick leave accumulated during employment with a public library in Ohio. In 1971 Op. Att'y Gen. No. 71-055, my predecessor concluded that: "State Library Board employees who have accumulated sick leave as public library board employees, may not be credited with sick leave balances so accumulated when employed by the State Library Board." You have asked me to reexamine this question. In so doing, I must begin with a review of R.C. 124.382 pursuant to which employees of the State Library of Ohio accumulate sick leave.

R.C. 124.382 provides, in part, for the accumulation of sick leave benefits by any employee whose salary or wage is paid directly by warrant of the State Auditor. Concerning the transfer of credit for previously accumulated sick leave, R.C. 124.382(F) states: "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 order to be entitled to the transfer of credit for previously accumulated sick leave pursuant to R.C. 124.382(F), an employee's transfer of employment must be from one "public agency" to another. Thus, I must determine whether a public library is a "public agency" for purposes of R.C. 124.382(F).

I am unaware of any judicial decisions or prior opinions of this office construing the term "public agency," as used in R.C. 124.382. I note, however, that prior to the enactment of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff., in part, Nov. 15, 1981), employees currently receiving sick leave benefits pursuant to R.C. 124.382 received such benefits under R.C. 124.38, which provided sick leave benefits for, "[e]ach employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county, municipal, and civil service township service, and each employee of any board of education for whom sick leave is not provided by [R.C. 3319.141]." 1974 Ohio Laws 693 (Am. H.B. 513, eff. Aug. 9, 1974). Before Am. Sub. H.B. 694 was enacted, R.C. 124.38 also contained language identical to that currently found in R.C. 124.382 concerning the transfer of accumulated sick leave benefits, providing that an employee who transferred "from one public agency to another" was entitled to be credited with the accumulated balance of his unused sick leave. Id. The term "public agency," as used in R.C. 124.38, was narrowly construed to refer to only those entities whose employees accumulated sick leave benefits under that statute. See, e.g., 1981 Op. Att'y Gen. No. 81-062 (community or technical college districts are not public agencies for purposes of R.C. 124.38); 1960 Op. Att'y Gen. No. 1302, p. 298 (syllabus, paragraph one) ("[t]he term 'public agencies' as used in [R.C. 143.29 (predecessor of R.C. 124.38)] includes only the state, counties, municipal corporations and boards of education"). See also 1954 Op. Att'y Gen. No. 3643, p. 128 (syllabus, paragraph one) ("[t]he words 'public agency' used in [R.C. 143.29 (predecessor of R.C. 124.38)] include the state, the several counties, all municipalities and all boards of education"). This narrow construction was adopted in Op. No. 71-055.

In order to understand the interpretation of the term "public agency," as set forth above, it is useful to examine the legislative history of R.C. 124.38. In 1947 Ohio Laws 368 (Am. S.B. 52), the General Assembly enacted G.C. 486-17c which provided sick leave benefits for, "[e]ach full-time employee, whose salary or wage is paid in whole or in part by the state of Ohio." Concerning the transfer of accumulated, unused sick leave, G.C. 486-17c stated: "An employee who transfers from one state agency to another state agency shall be credited with the unused balance of his accumulated sick leave" (emphasis added). In 1949-50 Ohio Laws 557 (Am. H.B. 109), the General Assembly amended G.C. 486-17c to provide sick leave not only for state employees, but also for "each full-time employee in the various offices of the county service and municipal service, and each full-time employee of any board of education." At the same time, the transfer provision of G.C. 486-17c was amended to read: "An

employee who transfers from one public agency to another public agency shall be credited with the unused balance of his accumulated sick leave." In interpreting the legislative intent of so amending G.C. 486-17c, Op. No. 71-055 reasoned that the fact that the legislature, in amending the transfer provision of G.C. 486-17c, changed the term "state agency" to "public agency" at the same time it broadened the entitlement to sick leave benefits to include not only full-time state employees, but also full-time county, municipal, and board of education employees, indicates that the legislature intended to encompass within the term "public agencies" those employers whose employees became entitled to receive sick leave benefits under that section. Since there is no indication that the legislature in so amending G.C. 486-17c also intended to broaden the meaning of the term "public agency" to encompass agencies other than those whose employees accumulate sick leave pursuant to that statute, I find the analysis of Op. No. 71-055 to be persuasive.

In light of the legislative history of R.C. 124.382, it appears that the term "public agency," as used in R.C. 124.382, has the same meaning as used in R.C. 124.38. As noted above, in 1981 the General Assembly again amended the statutory sick leave provisions. 1981-82 Ohio Laws, Part II, 3460 (Am. Sub. H.B. 694, eff., in part, Nov. 15, 1981). In this amendment the legislature, in describing the types of employees entitled to sick leave benefits under R.C. 124.38, removed the language an "employee, whose salary or wage is paid in whole or in part by the state," and added "each employee of any state college or university." At the same time, the legislature enacted R.C. 124.382, providing sick leave benefits for "all employees whose salary or wage is paid directly by warrant of the auditor of state." Thus, upon the enactment of Am. Sub. H.B. 694, each "employee 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]" accrued sick leave under R.C. 124.38; all "employees whose salary or wage is paid directly by warrant of the auditor of state" accrued sick leave under R.C. 124.382.

Concerning the transfer of sick leave, R.C. 124.382(F), as enacted in Am. Sub. H.B. 694, stated: "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," the same language used in R.C. 124.38.¹ Since the legislature amended R.C. 124.38 in the same Act in which it enacted R.C. 124.382, and used identical language in both statutes concerning the transfer of unused sick leave from one public agency to another, it appears that the term "public agency" has the same meaning in both statutes. See Village of Elmwood Place v. Schanzle, 91 Ohio St. 354, 110 N.E. 922 (1915) (two statutes which were part of the same statute prior to recodification of the Revised Statutes to the General Code were regarded as being in pari materia). I conclude, therefore, that the term "public agency," as used in R.C. 124.382, refers to agencies of the

¹R.C. 124.382, as enacted by Am. Sub. H.B. 694, became effective on the "first day of the pay period that includes the first day of December." 1981-82 Ohio Laws, Part II, 3460, 4259 (Am. Sub. H.B. 694, eff., in part, Nov. 15, 1981) (uncodified section 150).

state, the counties, municipalities, civil service townships, and boards of education. Thus, in order for an employee to be entitled by R.C. 124.382 to receive credit for previously accumulated sick leave, such sick leave must have been accumulated in the service of the state, a county, a municipality, a civil service township, or a board of education.

You specifically ask whether an employee of the State Library of Ohio is entitled to credit for sick leave accumulated while in the service of the various public libraries and library districts in the State. As set forth above, R.C. 124.382 entitles an employee to transfer to his present employment credit for previously accumulated sick leave only if such leave were accumulated in the service of the state, a county, a municipality, a civil service township, or a board of education.²

R.C. Chapter 3375 provides for the organization and structure of different types of public libraries and library districts in Ohio, including county free public libraries, township libraries, municipal free public libraries and library districts, school district free public libraries, county library districts, and regional library districts.

The statutes which govern each type of public library or library district are similar. For example, R.C. 3375.06 states that a county free public library "shall be under the control and management of a board of library trustees." Boards of trustees of other libraries have similar authority. See e.g., R.C. 3375.10 (township library); R.C. 3375.12 (municipal free public library); R.C. 3375.15 (school district free public library); R.C. 3375.22 (free public library of county library district); R.C. 3375.30 (regional library district). Each board of library trustees is to organize in accordance with R.C. 3375.32 and is governed by R.C. 3375.33-.41 in the control and management of the library.

R.C. 3375.33 states:

The boards of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code are bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.

Among the powers conferred upon such boards of library trustees is the power to "[a]ppoint and fix the compensation of all of

²R.C. Chapter 4117 establishes collective bargaining procedures for, among others, the state and certain of its employees. See generally R.C. 4117.01(B) (defining public employers as including the state) and R.C. 4117.01(C) (defining public employees). Pursuant to R.C. 4117.10, the wages, hours, and terms and conditions of employment of state employees are governed by any agreement entered into pursuant to R.C. Chapter 4117 between the state and an exclusive representative. See generally 1984 Op. Att'y Gen. No. 84-092 (discussing R.C. Chapter 4117). Thus, the sick leave provisions of R.C. 124.382 are subject to variance as part of an agreement entered into pursuant to R.C. Chapter 4117.

the employees of the free public library under its jurisdiction." R.C. 3375.40(G). Thus, employees of free public libraries are employed by the boards of library trustees as described in R.C. 3375.33.

The courts of this state have discussed the independent nature of boards of library trustees and public library districts. See e.g., Mathis v. Cleveland Public Library, 9 Ohio St. 3d 199, 459 N.E.2d 877 (1984) (describing a public library as a political subdivision); Lorton v. Rossford Public Library, 69 Ohio App. 2d 82, 84, 430 N.E.2d 969, 971 (Wood County 1980) ("the board of trustees of a public library, and the public library itself, are entities or bodies distinct and separate from the school district where they are located" for purposes of R.C. 2743.01(B)). In Miller v. Akron Public Library, 60 Ohio L. Abs. 364, 96 N.E.2d 795 (C.P. Summit County 1951), the court discussed the legislature's 1947 recodification of the laws concerning public libraries. The court stated that the legislature:

made all the various library boards bodies politic and corporate, and as such capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.

In the court's opinion this made them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic.

60 Ohio L. Abs. at 369, 96 N.E.2d at 798.

As set forth above, pursuant to R.C. 3375.33, boards of library trustees appointed pursuant to R.C. 3375.06, .10, .12, .15, .22, and .30 possess the same powers as did such boards at the time the Miller case was decided. It appears, therefore, that boards of library trustees operate independently of the political subdivisions in which they are located. See 1953 Op. Att'y Gen. No. 2994, p. 387. It is clear, therefore, that employees of the various boards of library trustees set forth in R.C. Chapter 3375 are not employees in the offices of the county, municipal, or civil service township service, and are not employees of any state college or university for purposes of R.C. 124.38. Further, it is clear that such employees are not "employees whose salary or wage is paid directly by warrant of the auditor of state," for purposes of R.C. 124.382. Rather, such persons are employees of the boards of library trustees and the corresponding library districts. As such, the employees do not accumulate sick leave under either R.C. 124.38 or R.C. 124.382.³ See 1961 Op. Att'y Gen. No. 2038, p. 94

³Although employees of the various library boards mentioned in R.C. 3375.33 do not accumulate sick leave benefits pursuant to either R.C. 124.38 or R.C. 124.382, the boards may provide sick leave benefits for such employees as part of their compensation under R.C. 3375.40(G). See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) (sick leave benefits are part of compensation); 1950 Op. Att'y Gen. No. 2077, p. 535 (syllabus, paragraph two).

(employees of board of trustees of county library district created under R.C. 3375.19 or .20 are not entitled to sick leave benefits under R.C. 143.29 (predecessor of R.C. 124.38)). Since a public library employee hired pursuant to R.C. 3375.40(G) is not entitled to accumulate sick leave benefits pursuant to either R.C. 124.38 or R.C. 124.382, R.C. 124.382 does not entitle an employee currently receiving sick leave benefits pursuant to that section to transfer to his current employment credit for sick leave benefits previously accumulated in the service of a public library established under R.C. Chapter 3375. Since the sick leave benefits of an employee of the State Library of Ohio are governed by R.C. 124.382, such an employee is not entitled to credit for sick leave benefits previously accumulated in the service of another public library. Although the statutory scheme governing sick leave benefits for public employees has been significantly altered since the issuance of Op. No. 71-055, I concur in the reasoning of the opinion and have no basis for altering the conclusion set forth in the opinion.

It is, therefore, my opinion, and you are advised, that an employee who is accumulating sick leave benefits pursuant to R.C. 124.382 may not, pursuant to that statute, transfer to his current employment credit for sick leave benefits that were accumulated in the service of a public library established under R.C. Chapter 3375.