

## OPINION NO. 81-001

### Syllabus:

1. When an individual leaves employment with one appointing authority of a county to become employed immediately by another appointing authority of that county, such a change in employment constitutes a "separation" for purposes of R.C. 325.19. Upon such separation, the employee is entitled to payment by the first appointing authority for vacation leave accumulated but unused during the period of employment with that appointing authority. (1968 Op. Att'y Gen. No. 68-086 and 1961 Op. Att'y Gen. No. 2021, p. 67 overruled to the extent that they are inconsistent with this opinion.)
2. R.C. 325.19 requires that payment for accumulated, unused vacation leave be at the employee's rate of pay immediately prior to separation.

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**To: John W. Allen, Richland County Prosecuting Attorney, Mansfield, Ohio**  
**By: William J. Brown, Attorney General, January 27, 1981**

I have before me your request concerning payment for accumulated vacation leave in the following situation. An employee entitled to two hundred hours of vacation leave per year accumulated 571.10 hours of vacation leave, with permission of her employer, the county auditor, prior to resigning on Friday, September 12, 1980. During employment with the county auditor, this individual was accruing vacation leave according to the benefit schedule provided by R.C. 325.19, and was accumulating it with permission of the county auditor. See R.C. 325.19. On Monday, September 15, 1980, the individual became employed as deputy clerk of the probate court of the same county. Your specific concern is as follows: "Under these facts, is this employee entitled to be compensated at her current rate of pay for these 571.10 hours of accrued but unused vacation?"

R.C. 325.19, governing vacation leave of county employees, reads, in pertinent part, as follows:

Each full-time employee in the several offices and departments of the county service, including full-time hourly-rate employees, after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay. . . . A full-time county employee with twenty-five years of service with the county or any political subdivision of the state shall have earned and is entitled to two hundred hours of vacation leave with full pay. Such vacation leave shall accrue to the employee at the rate of . . . seven and seven-tenths hours each biweekly period for those entitled to two hundred hours per year.

....

...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.)

In addition to establishing the amount of vacation to which county employees are entitled, this section provides for the accumulation of vacation leave and for compensation at the time of separation for certain unused vacation benefits. It permits an appointing authority to allow an employee to carry over vacation leave for up to three years and to be paid for such leave upon separation.

R.C. 325.17 reads, in part, as follows:

[The county auditor and probate judge] may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them.... Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid biweekly from the county treasury, upon the warrant of the auditor.

It is clear from this statute that an employee in the office of either the county auditor or probate judge is an "employee in the several offices and departments of the county service." See 1974 Op. Att'y Gen. No. 74-085. The vacation leave benefits of the individual in the question you pose, during her employment with the county auditor and probate judge, are, therefore, governed by R.C. 325.19.

R.C. 325.19 provides for payment of accumulated but unused vacation leave at the time of separation. 1980 Op. Att'y Gen. No. 80-057. The answer to your question depends, therefore, on what circumstances constitute a "separation" within the meaning of R.C. 325.19. In 1962 Op. Att'y Gen. No. 3425, p. 931, the term "separation," as used in R.C. 325.19, was interpreted as meaning "any change in position wherein the employee would not be able to carry over earned vacation credit to the new position." That opinion involved a situation where a county employee transferred to a position as a county officer. Because county officers are neither entitled to nor limited to a certain amount of vacation leave, the opinion concluded that such a transfer constitutes a "separation" within the meaning of R.C. 325.19. This analysis does not, however, answer your question because the employee in the situation you pose is changing from one position of county employment to another. In both positions, the individual is entitled to vacation benefits provided by R.C. 325.19.

A similar question appears to have been discussed in 1968 Op. Att'y Gen. No. 68-086, in which it was concluded, at p. 2-110, that, "where the unused vacation leave was accrued with permission of a prior appointing authority it is a valid obligation of the present appointing authority and may be paid subsequent to the date that such employee was separated from the county service." The meaning of the terms "prior appointing authority" and "present appointing authority" as used in Op. No. 68-086 is unclear. The employee in that situation appears to have

accumulated his unused vacation leave while working for an appointing authority whose position was later filled by another person. It is possible, however, that the employee in question accumulated vacation leave while working for more than one appointing authority, a situation similar to the one you pose in your request. Since the factual circumstances underlying the conclusion reached in Op. No. 68-086 are unclear, I am of the opinion that the conclusion reached in that opinion is not controlling in determining the answer to the question you have posed.

Similarly, I am of the opinion that the conclusion reached in 1961 Op. Att'y Gen. No. 2021, p. 67, is not controlling in determining the answer to your question. In that opinion, one of my predecessors examined certain provisions of R.C. 325.19 (1959 Ohio Laws 627 (Am. Sub. H.B. 208, eff. Nov. 4, 1959)). As then in effect, R.C. 325.19 stated that "[t]he annual leave during any one calendar year may be extended to include unused vacation leave of previous years provided the total leave taken in any one year shall not exceed six weeks." In light of the fact that R.C. 325.19, at that time, allowed all county employees accumulation of vacation leave without requiring permission of the individual appointing authority, my predecessor concluded that so long as an employee remains in the county service generally, he may accumulate unused vacation leave, provided that the total leave taken in any one year may not exceed six weeks. The opinion also implied that payment for accumulated, unused vacation leave may occur only at the time of separation from county service.

Subsequent to the issuance of 1961 Op. No. 2021, however, R.C. 325.19 was amended. R.C. 325.19 now provides that "the appointing authority may, in special and meritorious cases, permit [an] employee to accumulate and carry over his vacation leave to the following year." Thus, the decision as to whether any employee may accumulate vacation leave lies solely with the individual appointing authority. To require an appointing authority to allow an employee vacation leave previously accumulated with permission of a different appointing authority would nullify the discretion given to each appointing authority by R.C. 325.19 to decide whether to allow any employee accumulation of vacation benefits.

One of my predecessors concluded that the intent behind the provision in R.C. 325.19 allowing payment for unused vacation leave upon separation is "that an employee shall not lose the benefit of vacation time earned but not taken when he leaves the position in which he earned it." 1962 Op. Att'y Gen. No. 3425, p. 931, 932. To treat an individual's change in employment from one appointing authority to another as a "separation," for purposes of R.C. 325.19, would be consistent with the intent behind this section; an employee would be able to take vacation leave prior to beginning employment with the new appointing authority or would be paid for the accumulated but unused vacation leave upon leaving employment with the previous appointing authority. I conclude, therefore, that an individual who changes employment from the office of one appointing authority to another in the same county has "separated," within the meaning of R.C. 325.19. Based on the current language of R.C. 325.19, specifically the provision giving the appointing authority discretion in allowing accumulation of vacation leave, I hereby overrule 1961 Op. Att'y Gen. No. 2021, p. 67 to the extent that it is inconsistent with this conclusion. Because the facts involved in 1968 Op. No. 68-086, as discussed above, are unclear, I hereby overrule that opinion to the extent that it is inconsistent with the analysis adopted herein.

R.C. 325.19 states:

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.)

Clearly, payment for accumulated but unused vacation leave occurs at the time one separates from employment. 1980 Op. Att'y Gen. No. 80-057. R.C. 325.19 states that payment shall be made "at the current rate of pay." Because payment occurs at the time of separation, the current rate of pay must be the rate of pay the employee received immediately prior to separation. See 1961 Op. Att'y Gen. No. 2021, p. 67. In the situation you pose the employee is, therefore, entitled to be paid by the county auditor for the 571.10 hours of unused vacation leave at the rate of pay she was receiving immediately prior to leaving employment with the county auditor. See 1968 Op. Att'y Gen. No. 68-086 ("where [accumulated, but unused vacation leave] is due a former employee, it is a valid obligation of the employing authority of the department wherein he was employed at the date of his separation").

It is, therefore, my opinion, and you are advised, that:

1. When an individual leaves employment with one appointing authority of a county to become employed immediately by another appointing authority of that county, such a change in employment constitutes a "separation" for purposes of R.C. 325.19. Upon such separation, the employee is entitled to payment by the first appointing authority for vacation leave accumulated but unused during the period of employment with that appointing authority. (1968 Op. Att'y Gen. No. 68-086 and 1961 Op. Att'y Gen. No. 2021, p. 67 overruled to the extent that they are inconsistent with this opinion.)
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