

OPINION NO. 87-055

Syllabus:

For purposes of determining years of service accrued by a full-time county employee in order to calculate vacation leave earned under R.C. 325.19, years of

part-time service with the county or other political subdivision of the state shall be treated the same as years of full-time service with the county or other political subdivision of the state. (1966 Op. Att'y Gen. No. 66-120, approved and followed).

To: W. Allen Wolfe, Muskingum County Prosecuting Attorney, Zanesville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987

I have before me your request for my opinion regarding vacation leave for county employees. I have phrased your question as follows:

In calculating vacation leave for a full-time county employee, how much credit should be given for prior part-time service in county government?

Your situation involves an employee who worked for twenty years as a part-time county employee but now works as a full-time county employee. You wish to know if the employee should receive the same amount of vacation leave as an employee who has worked full-time for twenty years.

R.C. 325.19 establishes the method by which county vacation leave is calculated. This section reads, in part, as follows:

(A) 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. One year of service shall be computed on the basis of twenty-six biweekly pay periods. A full-time county employee with eight or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay. A full-time county employee with fifteen or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred sixty 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 three and one-tenth hours each biweekly period for those entitled to eighty hours per year; four and six-tenths hours each biweekly period for those entitled to one hundred twenty hours per year; six and two-tenths hours each biweekly period for those entitled to one hundred sixty hours per year; and seven and seven-tenths hours each biweekly period for those entitled to two hundred hours per year.

(B) A board of county commissioners may, by resolution, grant vacation leave with full pay to part-time county employees. A part-time county employee shall be eligible for vacation leave with full pay upon the attainment of the first year of employment, and annually thereafter. The ratio

between the hours worked and the vacation hours awarded to a part-time employee shall be the same as the ratio between the hours worked and the vacation hours earned by a full-time employee as provided for in this section. (Emphasis added.)

This same issue was addressed by one of my predecessors in 1966 Op. Att'y Gen. No. 66-120. That opinion reads, in part, as follows:

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".

Op. No. 66-120 at p. 2-224 (emphasis added). Thus my predecessor concluded that an employee would receive credit for a year of service no matter whether that year was served in a full-time capacity or a part-time capacity, but an employee could only be credited with vacation leave if he was working full-time. This conclusion was clearly appropriate under the statute as it was written at that time. See 1965 Ohio Laws 1662 (Am. Sub. H.B. 70, eff. Oct. 30, 1965). However, the statute has undergone changes through amendment, and I must therefore reexamine this issue in light of those changes.

At the time Op. No. 66-120 was issued, R.C. 325.19 contained no definition of "years of service". See Am. Sub. H.B. 70. R.C. 325.19 now states that "[o]ne year of service shall be computed on the basis of twenty-six biweekly pay periods." However, this language does not require that an employee work full-time during a biweekly period to receive credit for that period. Thus, the analysis in Op. No. 66-120 continues to apply. As noted in that opinion, "[i]f 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'". Op. No. 66-120 at 2-225. I believe this addition to R.C. 325.19 strengthens the conclusion of Op. No. 66-120, for it establishes that a year of service does not require an annual full-time equivalent of hours on the job. Rather it requires only the passage of twenty-six biweekly pay periods, regardless of hours worked in each pay period, in order to establish one year of service.

The conclusion reached in Op. No. 66-120 is reinforced by the language in R.C. 325.19(B). It allows boards of county commissioners to grant vacation leave to part-time employees, and states, in part, that "[a] part-time county employee shall

be eligible for vacation leave with full pay upon attainment of the first year of employment, and annually thereafter." This sentence allows new part-time employees to receive vacation leave after one year, the same waiting period applicable to full-time employees. If years of service were intended to accrue at a slower rate for part-time employees than for full-time employees, then it would be reasonable to expect that part-time employees would not receive any vacation at the end of their first year. Instead, vacation leave would be delayed until the part-time employee had worked the same number of hours that a full-time employee works in a year. The General Assembly did not impose such a requirement, and this reflects an intent to treat full-time and part-time positions the same for purposes of accruing years of service. The only difference between full-time and part-time employees is in the number of hours of vacation leave each year. The last sentence of R.C. 325.19(B) states that "[t]he ratio between the hours worked and the vacation hours awarded to a part-time employee shall be the same as the ratio between the hours worked and the vacation hours earned by a full-time employee as provided by this section." Since years of service accrue at the same rate for part-time employees as for full-time employees a county employee who has worked part-time for twenty years, and then switches to a full-time position, accrues vacation leave based on twenty years of service.

It is, therefore, my opinion that for purposes of determining years of service accrued by a full-time county employee in order to calculate vacation leave earned under R.C. 325.19, years of part-time service with the county or other political subdivision of the state shall be treated the same as years of full-time service with the county or other political subdivision of the state. (1966 Op. Att'y Gen. No. 66-120, approved and followed).