

## OPINION NO. 74-085

## Syllabus:

1. The vacation rights of an employee of a county welfare department were governed by R.C. 325.19 from 1966 until such employees were granted the same vacation rights as state employees by an amendment to R.C. 121.161 in 1973.

2. For the purposes of R.C. 325.19 a county welfare employee, who had formerly served as county treasurer, should be credited with his years of service as a county officer, in computing the amount of vacation leave to which he is entitled. (First branch of syllabus of Opinion No. 65-145, Opinions of the Attorney General for 1965, overruled.)

To: Otis R. Hess, Jr., Fayette County Pros. Atty., Washington, C.H., Ohio  
By: William J. Brown, Attorney General, October 7, 1974

I have your request for an opinion which reads in part as follows:

"An individual has served four terms as the County Treasurer for Fayette County, Ohio. Thereafter, from approximately May 7, 1964 through June 30, 1966 (a period of two years and fifty four days)

he was employed by the State of Ohio, Division of Aid for the Aged. On July 1, 1966, he was transferred to the Fayette County Welfare Department, bringing with him accrued vacation time in the amount of twelve days and thirty five and five-eighths days sick leave.

"Under Aid for Aged employment, he was entitled to ten working days per year vacation. When he was transferred to the Fayette County Welfare Department, he requested an additional five days vacation per year for a total of fifteen days vacation based on the fact that he had been the County Treasurer for sixteen years.

"Three years later (based on an interpretation of O.R.C. Sec. 325.19) the Director of the Fayette County Department of Welfare discussed the granting of the employee's request for fifteen days vacation per year and desire to cut him back to ten days per year with a make-up adjustment over the following years.

"Would you please give me your opinion concerning the following questions:

1. The application of O.R.C. § 325.19 to the entitlement of the employee's vacation time?
2. Was the employee entitled to three weeks vacation because of his years of service?
3. If the employee is not entitled to the additional vacation time, in what manner, if any, need he reimburse the County for the over-payment?"

As I understand it, the individual concerned served as County Treasurer for sixteen years. Thereafter, beginning in May 1964, he became a public employee, first of the State for a period of approximately two years, and subsequently of the County Welfare Department. At the time of this last transfer he was allowed fifteen days vacation per year, based on his sixteen years service as a county officer, since under R.C. 325.19 county employees having ten or more years of county service were at that time entitled to fifteen days annual vacation. Three years later the Director of the County Welfare Department challenged this interpretation of R.C. 325.19. Your first question is whether that Section of the Revised Code applies to this case.

When the individual became an employee of the County Welfare Department in 1966, the vacation rights of state employees under R.C. 121.161 were significantly greater than those of county employees under R.C. 325.19. However, in 1973 the General Assembly amended R.C. 121.161 to give county welfare employees the same vacation benefits as state employees. In pertinent part the amended Section reads as follows:

"\* \* \*A full-time state employee or county welfare employee with fifteen or more years of

service with the state or any political sub-  
division of the state shall have earned and is  
entitled to one hundred sixty hours of vacation  
with full pay. \* \* \*

\* \* \* \* \* \* \* \* \*

\* \* \* \*Notwithstanding section 325.19 of the  
Revised Code, county welfare employees shall re-  
ceive vacation benefits as provided in this section."

Moreover, the General Assembly has just recently amended  
R.C. 325.19 to grant all county employees equal vacation rights  
with those accorded to state employees. Am. S.B. No. 408, ef-  
fective July 22, 1974.

There is, however, nothing in the language of either of the  
above amendments to indicate that the General Assembly intended  
them to operate retroactively, and R.C. 1.48 provides:

"A statute is presumed to be prospective  
in its operation unless expressly made retro-  
spective."

I conclude, therefore, that this individual's vacation  
rights were governed by R.C. 325.19, from the time he became  
an employee of the County Welfare Department in 1966, until  
county welfare employees were granted the same vacation rights  
as state employees by the amendment of R.C. 121.161 in 1973.

Your second question is whether, in determining the em-  
ployee's vacation rights from 1966 to 1973 under R.C. 325.19,  
his previous terms as County Treasurer should be included in  
the computation of his years of county service. During the  
period in question the language of R.C. 325.19 read substantially  
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, is entitled during each  
year thereafter, to two calendar weeks, excluding  
legal holidays, of vacation leave with full pay.  
Employees having ten or more years of county  
service are entitled, during each year thereafter,  
to three calendar weeks of vacation leave with  
full pay. Employees having twenty or more years  
of county service are entitled, during each year  
thereafter, to four calendar weeks of vacation  
leave with full pay. \* \* \*

\* \* \* \* \* \* \* \* \*

Your second question requires an interpretation of the term, "county  
service", as it is used in R.C. 325.19. If service as a county  
officer, specifically county treasurer, qualifies as "county  
service" under R.C. 325.19, one who has sixteen years of such ser-  
vice would have been entitled to three weeks of vacation leave  
pursuant to that Section.

The difficulty results from the fact that public officers,  
as opposed to public employees, are not entitled to vacation  
leave. As was noted by one of my predecessors in Opinion No.

3239, Opinions of the Attorney General for 1962, at pages 670 and 671:

"The attributes which mark the distinction between public officers and public employees, particularly those relating to hours of work and compensation, compel me to the conclusion that the word 'employee' as used in Section 325.19, supra, is not intended to include within its meaning persons who are elected public officers of the county. Such persons are not entitled to (or limited to) any particular period of time for vacation leave."

The distinction between officer and employee is important in this context, for an officer takes his compensation as incident to his office, and not on the basis of work performed. Similarly an officer is not bound by a 50 week-year, 40 hour-week, but rather performs his job as the demands of his office dictate. Thus, the legislature geared R.C. 325.19 toward one who is an employee, in order to establish a uniform policy of vacation benefits for county employees. See Opinion No. 3548, Opinions of the Attorney General for 1963, page 68; and cf., Opinion No. 73-104, Opinions of the Attorney General for 1973, and Opinion No. 74-021, Opinions of the Attorney General for 1974.

The question, then, is whether "county service", as used in R.C. 325.19 which governs the vacation rights of employees, includes service as an officer of the county.

Although it is true that there is no specific statutory definition of "county service" and that R.C. 325.19 has specific application only to county employees, Chapter 124 of the Revised Code which deals with the civil service system of the State defines 'civil service' as including "all offices and positions of trust or employment in the service of the state and the counties, \* \* \*." R.C. 124.01(A). I think it clear, therefore, that both the officers of a county and the employees thereof are included in the "county service." Cf. Opinion No. 66-149, Opinions of the Attorney General for 1966, in which my predecessor said that "it would seem that the General Assembly intended the broadest coverage legally permissible for Section 325.19, Revised Code." See also Opinion No. 66-120, Opinions of the Attorney General for 1966.

I find nothing to the contrary in the three opinions of prior Attorneys General to which you directed my attention in your letter of request. In Opinion No. 70-072, Opinions of the Attorney General for 1970, a county employee sought to have his vacation period determined upon the basis of prior service as a city official. This was not, as here, a question of computation of "county service." Furthermore, that opinion was superceded by the enactment of R.C. 9.44, effective August 27, 1970. In the other two opinions the question was whether a public officer could, upon termination of his service as such officer, be compensated for vacation time which he did not use while in office. Opinion No. 3548, Opinions of the Attorney General for 1963, and Opinion No. 3239, Opinions of the Attorney General for 1962. As we have already seen above, the answer to this question must clearly be in the negative, for a public officer is neither entitled to, nor limited to, any specific period of time for vacation leave. But this has nothing to do with the ques-

tion of whether a public officer is considered to be in the public service.

Nor do I think there is anything contrary to the present conclusion in the holdings of two other recent opinions, Opinion No. 73-104, Opinions of the Attorney General for 1973, and Opinion No. 74-021, Opinions of the Attorney General for 1974. Both of those opinions involved state officers who were retiring as officers but were seeking reimbursement for unused leave accrued during prior service as state employees. I held there that the language of the pertinent statutes prohibited such reimbursement to one who retired as an officer.

One further opinion must be noted. In the first branch of the syllabus in Opinion No. 65-145, Opinions of the Attorney General for 1965, my predecessor held that a state employee who had formerly been a state officer could not be given credit for his years as an officer in determining his vacation leave as an employee - a holding squarely in conflict with my present conclusion. I must disagree with that opinion, the sole basis for which was a quotation from Opinion No. 3548, supra, to the effect that a state officer is not, like a state employee, subject to the provisions of the vacation leave Section of the Code. But the quotation was not applicable to the facts before my predecessor in Opinion No. 65-145. And here, on the contrary, we are concerned with a county employee who had formerly served as County Treasurer.

In view of the fact that your second question is answered in the affirmative, an answer to the third question is unnecessary.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The vacation rights of an employee of a county welfare department were governed by R.C. 325.19 from 1966 until such employees were granted the same vacation rights as state employees by an amendment to R.C. 121.161 in 1973.

2. For the purposes of R.C. 325.19 a county welfare employee, who had formerly served as county treasurer, should be credited with his years of service as a county officer, in computing the amount of vacation leave to which he is entitled. (First branch of syllabus of Opinion No. 65-145, Opinions of the Attorney General for 1965, overruled.)