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1. SICK LEAVE BENEFITS—APPLY TO ALL FULL-TIME MUNICIPAL EMPLOYEES—SECTION 486-17c G. C.
2. SICK LEAVE BENEFITS MANDATORY—SHOULD BE APPLIED UNIFORMLY TO ALL EMPLOYEES COVERED—COUNCIL OF MUNICIPALITY MAY NOT PROVIDE SICK LEAVE BENEFITS FOR MUNICIPAL EMPLOYEES WHICH ARE NOT CONSISTENT WITH PROVISIONS OF SECTION 486-17c G. C. OVERRULED BY OPINION 266, APRIL 25, 1951.

SYLLABUS:

1. The sick leave benefits of Section 486-17c, General Code, as amended, apply to all full-time municipal employees.

2. The sick leave benefits of Section 486-17c, General Code, as amended, are mandatory and should be applied uniformly to all employees covered thereby. The council of a municipality, therefore, may not provide sick leave benefits for municipal employees which are not consistent with the provisions of said section.

Columbus, Ohio, April 12, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion is as follows:

"A question has arisen in connection with the examination of various Ohio cities by the Bureau of Inspection and Supervision of Public Offices over the correct interpretation of the provisions of Section 486-17c, General Code, with reference to 'sick leave' for employes of municipal corporations.

"From a reading of said Section 486-17c G. C., it seems obvious that all civil service employes shall be entitled to sick leave credit at the rate of one and one-quarter work days for each completed month of service. Also, that unused sick leave shall be cumulative up to ninety days. However, some doubt exists among municipal officers and their legal advisors as to whether or not the provisions of Section 486-17c G. C. were intended to apply to municipal corporations, in view of the language used in the last sentence of the first paragraph, to wit:

'This act shall be uniformly administered as to employes in each agency of the State government.'

"We are enclosing copies of correspondence received from officials of two Ohio cities in regard to these questions, for your information.

"Inasmuch as the correct interpretation of Section 486-17c G. C. as it pertains to municipal corporations, is of state-wide concern, we respectfully request that you give consideration to the following questions, and furnish us with your formal Opinion in answer thereto:

1. Do the provisions of Section 486-17c G. C. apply to municipal corporations?
2. If the answer to question number one is in the affirmative, are ALL MUNICIPAL EMPLOYES entitled to 'sick leave' in accordance with the provisions of Section 486-17c G. C., or are the provisions of said section limited to civil service employes only?
3. Is the stipulation as to sick leave of one and one-fourth work days for each completed month of service to be construed as the minimum amount of sick leave due each employe, or is it intended to be a maximum of sick leave time which may be authorized?

4. Does the council of a municipal corporation have authority to fix by ordinance sick leave for municipal employes, the terms and provisions of which are different from that provided in Section 486-17c, General Code, when such action results in a more liberal allowance of sick leave time and cumulative sick leave credit to municipal employes?"

Section 486-17c, General Code, referred to in your request reads as follows:

"Each full-time employe, whose salary or wage is paid in whole or in part by the state of Ohio and each full-time employe in the various offices of the county service and municipal service, and each full-time employe of any board of education, shall be entitled for each completed month of service, to sick leave of one and one-fourth ($1\frac{1}{4}$) work days with pay. Employes may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employes, and to illness or death in the employe's immediate family. Unused sick leave shall be cumulative up to ninety (90) work days unless more than ninety (90) days are approved by the responsible administrative officer of the employing unit. The previously accumulated sick leave of an employe who has been separated from the public service may be placed to his credit upon his re-employment in the public service. An employe who transfers from one public agency to another public agency shall be credited with the unused balance of his accumulated sick leave. Provisional appointees or those who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted full-time employes herein. The responsible administrative officer of the employing unit may require the employe to furnish a satisfactory affidavit to the effect that his absence was caused by illness due to any of the foregoing causes. This act shall be uniformly administered as to employes in each agency of the state government.

"Nothing in this act shall be construed to interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employes for unused sick leave."

Your first question is whether the provisions of Section 486-17c, General Code, apply to municipal corporations. As you point out in your letter, there is an apparent conflict contained in Section 486-17c, in that the first part of the section contains the words, "each full-time employe in the various offices of the county and municipal service", and in the latter

part of the act the words "this act shall be uniformly administered as to employes in each agency of the State government", appear. These words are new to Section 486-17c having been added by the 98th General Assembly. Other changes made in said section include, where "state service" appears "public service" has been substituted.

It is readily apparent from the amendments made to Section 486-17c by the 98th General Assembly that the legislature intended the broadest coverage possible for the amended section. Persons specifically extended sick leave privileges are full-time employes under the jurisdiction of the legislature in any of the following categories :

- (1) paid in whole or in part by the State of Ohio ;
- (2) in the various offices of the county service ;
- (3) in the various offices of the municipal service ; and
- (4) of any board of education.

In view of the specific reference to employes of municipal corporations, I have difficulty seeing how a question could be raised concerning whether or not they are within the scope of the legislation. Further, I interpret the language used: "in the various offices of the * * * municipal service", to indicate a legislative intent *not* to omit any full-time municipal employe. Also, I fail to see how the concluding sentence of the first paragraph of said section, to which you refer, and repeated above, casts any doubt upon the application of the sick leave provisions to municipal employes. There is no language of exception or qualification in the sentence to which you refer. Its clear sense and intent is to emphasize one of the principal purposes of the legislation, viz., to provide for uniform operation and administration of the sick leave privileges extended by the Act.

The validity of the concluding observation in the preceding paragraph is seen by referring to the title of the Act in the 98th General Assembly (Am. H. B. No. 109) :

"An Act to amend section 486-17c of the General Code relative to *uniform operation of sick leave in all governmental agencies.*"
(Emphasis supplied.)

Thus, it is clear that the amendments to Section 486-17c proposed and adopted by the 98th General Assembly were intended to insure a uniform system of sick leave throughout the governmental service in the State

of Ohio, and I so interpret the last sentence of the first paragraph of said section.

I believe the preceding indicates the conclusions I have reached with respect to the questions you raise. However, before entering my conclusions formally, I should like to discuss the language used to provide the $1\frac{1}{4}$ day per month sick leave. It is stated that each employe covered "*shall be entitled* for each month of service, to sick leave of $1\frac{1}{4}$ work days with pay." To me, this is mandatory language, setting a maximum and a minimum. The employe is entitled to so much, no more, no less. To interpret this in any other way, would ignore the provisions with respect to uniformity of application and the title of the Act, discussed above.

In view of the preceding, I am of the opinion that :

(1) The sick leave benefits of Section 486-17c, General Code, as amended, apply to all full-time municipal employes.

(2) The sick leave benefits of Section 486-17c, General Code, as amended, are mandatory and should be applied uniformly to all employes covered thereby. The council of a municipality, therefore, may not provide sick leave benefits for municipal employes which are not consistent with the provisions of said section.

Respectfully,

HERBERT S. DUFFY,
Attorney General.