

Note from the Attorney General's Office:

1985 Op. Att'y Gen. No. 85-035 was modified by
1989 Op. Att'y Gen. No. 89-012.

OPINION NO. 85-035**Syllabus:**

1. Pursuant to R.C. 325.19, a full-time county employee does not accrue vacation benefits during his first year of employment.
2. Pursuant to R.C. 325.19, a full-time county employee who completes one year of county service, although such service is with more than one county, becomes entitled to eighty hours of vacation leave with full pay upon completion of the first year of service. Such vacation leave is to be paid entirely by the county in which the employee completes his first year of service.

To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 11, 1985

I have before me your request for my opinion in which you ask several questions about the vacation benefits to which an employee who transfers from service with one county to service with another county is entitled. Your letter provides the following background information:

On May 16, 1984 a person began working full time for Huron County in the Prosecutor's Office. The last day of employment with Huron County was Friday, January 11, 1985, at which time 53.59 hours of vacation time had accrued. Starting Monday, January 14, 1985, this same person transferred to the Erie County Prosecutor's Office and began working full time.

It is my further understanding that prior to May 16, 1984, the employee in question had never been employed by the state or any of its political subdivisions. Based upon these facts, you ask the following questions:

1. Does accrued vacation credit transfer from Huron County to Erie County making the employee eligible for vacation on May 16, 1985?
2. Upon the county employee attaining a total of one full year of service time on May 16, 1985, how many hours of vacation leave with full pay will be earned by said employee?
3. If accrued vacation credit transfers from Huron to Erie County, which county pays the [employee's] salary while he is on vacation, or is the cost apportioned between the two counties?

The employee about whom you are asking is currently employed as an Erie County assistant prosecuting attorney. It is clear that the office of prosecuting attorney is a county office. See State ex rel. Finley v. Lodwich, 137 Ohio St. 329, 29 N.E.2d 959 (1940). A person employed as an assistant prosecuting attorney is, therefore, a county employee. See 1971 Op. Att'y Gen. No. 71-050 at 2-172 ("it has long been the accepted opinion in this state that an assistant is, for all practical purposes, the alter ego of the prosecuting attorney and is authorized to act in his place in almost all matters"). See generally R.C. 309.06 (concerning appointment of assistant prosecuting attorneys and payment of their compensation from the general fund of the county treasury).

It is, therefore, necessary to examine R.C. 325.19 which concerns vacation benefits for county employees, and provides, in pertinent 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.

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 (C) Days specified as holidays in section 124.19 of the Revised Code shall not be charged to an employee's vacation leave. 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. . . . 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.)

Under R.C. 325.19, a full-time county employee, upon the attainment of the first year of employment, and annually thereafter, is entitled to eighty hours of vacation leave with full pay. Further, an employee receives increases in the amount of vacation leave to which he is entitled after eight years of service, fifteen years of service and twenty-five years of service. The amount of vacation leave to which a full-time county employee is entitled, pursuant to R.C. 325.19, depends upon the amount of service credit which he has accumulated with the county or any political subdivision of the state. See generally 1982 Op. Att'y Gen. No. 82-093. In addition to the prior service credit authorized by R.C. 325.19, R.C. 9.44¹ allows a county employee earning vacation credits currently to include prior service with the state and any political subdivision of the state in calculating the amount of vacation benefits to which he is entitled. See generally 1981 Op. Att'y Gen. No. 81-066.

Your first question concerns the transfer of "accrued vacation credit" when an employee transfers from one county to another. It is my understanding that you are referring to actual vacation benefits, rather than service credit. In answering your question, I note that the employee about whom you ask had less than one year of service credit upon his transfer from employment with Huron County to Erie

¹ R.C. 9.44 states:

A person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have his prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of his vacation leave. The anniversary date of his employment for the purpose of computing the amount of his vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.

County. Your letter further states that at the time your assistant left his employment in Huron County, he had accrued 53.9 hours of vacation leave. Pursuant to R.C. 325.19, however, a full-time employee is not entitled to receive any vacation benefits prior to completion of his first year of service. As concluded in 1982 Op. Att'y Gen. No. 82-064, at 2-180 to 2-181: "Because a full-time county employee does not become entitled to vacation leave under R.C. 325.19 until he has attained one year of service with the county or any other political subdivision of the state, such an employee does not accrue vacation benefits during his first year of employment." (Footnote omitted.)² Although a county employee does not accrue vacation benefits during his first year of service, such year is clearly a year of service with the county. In transferring employment from one county to another, R.C. 325.19 and R.C. 9.44 entitle an employee to retain the service credit accumulated in his former county employment. See 1966 Op. Att'y Gen. No. 66-149 (syllabus) ("[i]n determining length of service for vacation purposes of a county employee, under the provisions of [R.C. 325.19], service with any county of the state should be counted"). In the situation you pose the employee had not accrued 53.9 hours of vacation leave in his employment with Huron County; such employee is, however, entitled to retain service credit for that time spent in the employ of the Huron County Prosecutor.

Your second question asks: "Upon the county employee attaining a total of one full year of service time on May 16, 1985, how many hours of vacation leave with full pay will be earned by said employee?" In the situation you pose, on May 16, 1985, the employee completed one year of county service, but was, on that date, in the employ of his current appointing authority for less than one year. R.C. 325.19(A) states, in pertinent part:

Each full-time employee in the several offices and departments of the county service. . . 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. (Emphasis added.)

In order to answer your question it is necessary to determine the meaning of the phrase "attainment of the first year of employment," the time at which a full-time county employee with one year of service is entitled to receive eighty hours of vacation leave. Because the legislature has used the phrase "service of one year" in the same sentence as the phrase "first year of employment," the question arises as to whether, in the situation you pose, completion of one year of service coincides with completion of the first year of employment. Pursuant to R.C. 325.19(C), vacation leave is to be used during the year in which it accrues "and prior to the next recurrence of the anniversary date of his employment." R.C. 9.44, concerning the transfer of service credit for certain public employees for purposes of vacation leave, states, in part: "The anniversary date of his employment for the

² 1983 Op. Att'y Gen. No. 83-074 concluded in syllabus, paragraph two:

Where an individual transfers from employment in one county to a position of employment in another county, such a change in employment constitutes a separation for purposes of R.C. 325.19. Pursuant to R.C. 325.19, an employee is entitled to payment by the county at the time of separation for vacation leave accumulated but unused during the period of employment with the county. The county to which such employee transfers has no obligation to credit the employee with such vacation benefits. (Emphasis added.)

The conclusion reached in Op. No. 83-074 is not applicable to the situation you present because the employee about whom you ask did not accumulate any vacation benefits prior to his separation from employment in Huron County.

purpose of computing the amount of his vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service." The statutory scheme governing vacation benefits, thus, contemplates the accrual and use of vacation leave on an annual basis, such year being calculated with reference to the date on which the employee first became employed by the state or one of its political subdivisions. It is, therefore, apparent that, the employee about whom you ask completed his first year of employment at the same time he completed one year of service. Thus, on May 16, 1985, the employee about whom you ask became entitled to eighty hours of vacation leave with full pay.

Your final question asks: "If accrued vacation credit transfers from Huron to Erie County, which county pays the [employee's] salary while he is on vacation, or is the cost apportioned between the two counties?" Since, as stated in answer to your first question, a county employee does not accrue vacation benefits during his first year of service, but, instead becomes entitled to eighty hours of vacation leave with full pay upon attainment of his first year of employment, it appears that the legislature intended that the county employing a person at the time he completes his first year of employment is responsible for the entire cost of such vacation leave.

Based upon the foregoing, it is my opinion, and you are advised that:

1. Pursuant to R.C. 325.19, a full-time county employee does not accrue vacation benefits during his first year of employment.
2. Pursuant to R.C. 325.19, a full-time county employee who completes one year of county service, although such service is with more than one county, becomes entitled to eighty hours of vacation leave with full pay upon completion of the first year of service. Such vacation leave is to be paid entirely by the county in which the employee completes his first year of service.