

OPINION NO. 77-011**Syllabus:**

1. School employees, who are not required to work because of school closings for the reasons set out in Am. S.B. No. 51, effective 2/3/77, are not eligible for unemployment compensation based on the first 15 days of such closings.

2. School employees, who otherwise qualify under R.C. 4141.29, must be paid unemployment benefits for periods beyond the first 15 days that schools are closed for the reasons set out in Am. S.B. No. 51, effective 2/3/77.

3. The "first 15 days" referred to in Am. S.B. No. 51, effective 2/3/77, are to be computed cumulatively and need not be consecutive.

**To: Albert G. Giles, Administrator, Ohio Bureau of Employment Services,
Columbus, Ohio**

By: William J. Brown, Attorney General, March 14, 1977

Your request for my opinion poses the following questions concerning the effect of the recently enacted Am. S.B. No. 51, effective 2/3/77:

1. Must this Bureau pay school employees unemployment compensation benefits during the period of 15 days of school closing due to lack of heating fuel if said employees do not receive full or partial pay during this period?

2. Must this Bureau pay school employees unemployment compensation benefits after the 15 days of school closing due to lack of heating fuel have expired, and said employees do not receive full or partial pay?

3. Must the 15 days of school closing due to lack of heating fuel be consecutive or are they cumulative?

Section 1 of the Act is relevant to your questions. It reads:

Section 1. Notwithstanding sections 3313.48, 3313.481, 3313.482, 3313.484, 3313.485, and 3317.01 of the Revised Code, for purposes of such sections the first 15 days during the 1976-1977 school year on and after January 3, 1977 on which the schools of any school district were scheduled in the district's adopted school calendar to be open for instruction with pupils in attendance but, in the determination of the Superintendent of Public Instruction, were not so open because of a lack or potential lack of heating fuel sufficient to enable the schools to be fit for school use or because of the issuance, amendment, rescission, or suspension of a rule under section 122.87 of the Revised Code, shall be deemed to be days the schools were open for instruction with pupils in attendance. Except as otherwise provided in Section 2 of this act, all persons employed by a board of education and scheduled to work on such days but not required by the board to so work shall, for purposes of all provisions of Title XXXIII and Chapter 4141. of the Revised Code and any agreements adopted under such title or chapter, be deemed to have been employed and to have worked on such day for the same number of hours they were scheduled or would ordinarily have been required to work on such day, as determined by the Superintendent of Public Instruction.

Your first question is answered by the second sentence of Section 1, supra. It provides that for purposes of R.C. Chapter 4141 persons normally scheduled to work on such days, but not required to so work by the board of education, shall be deemed to have been employed and to have worked during that time. R.C. 4141.29 sets out the test by which eligibility for unemployment compensation is to be determined. It follows that for purposes of this test the General Assembly has expressly precluded a finding that the employees were unemployed during the first 15 days that a school was closed for the reason set out in the Act.

With respect to your second question, it should initially be noted that Am. S.B. No. 51, supra, by its own terms deals only with the first 15 days that a school is closed because of a lack or potential lack of heating fuel or because of action taken pursuant to R.C. 122.87. As such the Act contemplates no change in the law respecting the eligibility of school employees for unemployment compensation for periods of school closings

beyond the first fifteen days. As noted above R.C. 4141.29 provided guidelines for determining eligibility for unemployment compensation. Therefore, school employees, who otherwise qualify under R.C. 4141.29, must be paid unemployment benefits for periods beyond the first 15 days that schools are closed for the reasons set out in Am. S.B. No. 51, supra.

Any determination of eligibility must, of course, be made on a case by case basis, with a consideration not only of the reasons for the layoff, but also loss of compensation, as well as other factors set out in R.C. 4141.29. On this point I would refer you to 1974 Op. Atty. Gen. Nos. 74-096 and 74-104, in which I discussed eligibility for unemployment compensation during periods of layoff as a result of school closings for economic reasons. In Op. No. 74-104, I concluded that employees, who receive a regular paycheck for several weeks of a period during which schools are closed for lack of funds, are not eligible for unemployment benefits for those weeks covered by the paychecks.

Finally you have asked whether the 15 days of school closings referred to in Section 1 of Am. S.B. No. 51, supra, must be consecutive. As set out above, the first sentence of Section 1, supra, makes the provisions therein applicable to "the first 15 days during the 1976-1977 school year on and after January 3, 1977 on which "the schools of any school district were scheduled to be open but were not so open. . ."

It is a well settled and now codified rule of statutory construction that words and phrases are to be read in context and construed according to the rules of grammar and common usage. R.C. 1.42. Furthermore, to the extent that ambiguity exists it is appropriate to consider, among other things, the object sought to be attained and the circumstances under which the statute was enacted. R.C. 1.49. I find nothing in the language of this Section or elsewhere in the Act to suggest that the General Assembly intended to restrict the application of the provisions to situations in which schools are closed for 15 consecutive days. On the contrary Section 3, which declares the Act to be an emergency measure, states that its purpose is to permit school districts to close schools because of fuel shortages without jeopardizing their financial conditions "by eliminating the need for employees to receive or employers to pay unemployment compensation benefits for 15 days of fuel shortage closings. . . ."

To construe these provisions so as to limit their effect to periods in which schools are closed for 15 consecutive days would only serve to frustrate the express intention of the General Assembly by ignoring the clear meaning of the language used. I must, therefore, conclude that the 15 days referred to in Am. S.B. No. 51, supra, are cumulative and need not occur consecutively.

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

1. School employees, who are not required to work because of school closings for the reasons set out in Am. S.B. No. 51, effective 2/3/77, are not eligible for unemployment compensation based on the first 15 days of such closings.

2. School employees, who otherwise qualify under R.C. 4141.29, must be paid unemployment benefits for periods beyond the first 15 days that schools are closed for the reasons set out in Am. S.B. No. 51, effective 2/3/77.

3. The "first 15 days" referred to in Am. S.B. No. 51, effective 2/3/77, are to be computed cumulatively and need not be consecutive.