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PAYMENT OF MONEY TO SURVIVORS OR PERSONAL REPRESENTATIVES OF THE ESTATE OF A DECEASED EMPLOYEE OF A SCHOOL DISTRICT FOR UNUSED VACATION TIME ACCUMULATED BY EMPLOYEE BEFORE HIS DEATH IS NOT AUTHORIZED—§§121.161, R.C.; 2113.04, R.C.

SYLLABUS:

Neither Section 121.161, nor Section 2113.04, Revised Code, authorizes the payment of any amount of money to survivors or personal representatives of the estate of a deceased employee of a school district for unused vacation time accumulated by the employee before his death.

Columbus, Ohio, October 20, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir :

I have before me your request for my opinion, which request reads as follows :

“This office is in receipt of an inquiry with regard to the last paragraph of Section 121.161 of the Revised Code covering payment of the monetary value of unused accumulated vacation leave in the case of death of a state employee and whether the provisions of said section are applicable to the death of an employee of a city, exempted village, local or county school district.

“Section 121.161, Revised Code, specifies state employees only. It has been held that school boards are creations of the state and possess only such powers as are specifically delegated to the boards by statute or which may be necessarily implied from those powers specifically delegated.

“Also, as stated in 37 Ohio Jurisprudence, Section 295, page 555:—

“ ‘It is a general principle of interpretation that the mention of one thing implies the exclusion of the other thing ; * * *’

“In view of the fact that Section 121.161, Revised Code, makes specific reference to state employees only and as the statutory authority specifically fails to give such benefit to an employee of a board of education, it would follow that a board of education was without authority, under the provisions of Section 3313.20, Revised Code, to grant an allowance for such unused accumulated vacation leave to an employee of the board of education.

“Considering the number of inquiries relative to this question and the state-wide interest therein, will you please give consideration to the foregoing and give your formal opinion to the following question.

- “1. In case of the death of an employee of a city, exempted village, local or county school district, may unused accumulated vacation leave standing to the credit of such employee at the date of his demise be paid in accordance with the provisions of Section 2113.04 of the Revised Code or to his estate?”

The question you have presented is similar to one considered by my predecessor in Opinion No. 2374, Opinions of the Attorney General for 1958, page 436. In this opinion Section 121.161, Revised Code, was analyzed. This section reads in part as follows:

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‘In the case of the death of a state employee, the unused vacation leave to the credit of any such employee shall be paid in accordance with Section 2113.04 of the Revised Code, or to his estate.’”

As to the scope of this statute, Opinion No. 2374 contains the following language:

“This section plainly limits the authorization for payment for unused vacation leave in case of death to state employees and the reference to Section 2113.04, Revised Code, merely authorizes payment of all wages to certain named survivors without requiring appointment of an executor or administrator of an estate where the earnings due do not exceed \$300.00. This section cannot by inference be extended to authorize any payment not due to such deceased employee. It is a well-known principle of law that salary statutes must be strictly construed against the claimants. See 14 Ohio Jurisprudence, 2d, p. 230.”

This opinion then concluded as follows:

“The survivors or personal representatives of the estate of an employee of a county after his death have no right to receive pay for unused vacation time accumulated by the employee before his death.”

Section 2113.04, Revised Code, cited in your request, reads in part as follows:

“Any employer, including the state or a political subdivision, at any time not less than thirty days after the death of his or its employee, may pay all wages or personal earnings due to such deceased employee * * *”

If there were statutory authorization for the payment for unused vacation time accumulated by the deceased employee it could properly be paid under this section. Chapter 3319., Revised Code, covering conditions of employment of all employees of school district boards of education authorizes vacations for employees but does not authorize pay-

ment for unused vacation time of a deceased employee. For this reason, I must conclude that no such payment may be permitted.

It is, therefore, my opinion and you are accordingly advised that neither Section 121.161, nor Section 2113.04, Revised Code, authorizes the payment of any amount of money to survivors or personal representatives of the estate of a deceased employee of a school district for unused vacation time accumulated by the employee before his death.

Respectfully,

MARK McELROY

Attorney General