

Note from the Attorney General's Office:

1984 Op. Att'y Gen. No. 84-055 was limited by
1988 Op. Att'y Gen. No. 88-089.

OPINION NO. 84-055

Syllabus:

For purposes of computing a county employee's vacation benefits, R.C. 325.19 requires a county to give a county employee service credit for periods of prior service as: an elected official of a township (township trustee); an elected official of a village (village councilman); a school teacher who has taught in a municipal, joint vocational or local school district; or an employee of a municipality.

To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 18, 1984

I have before me your request for my opinion in which you ask whether R.C. 9.44 and R.C. 325.19 require a county to give county employees vacation credit for periods of prior employment as: an elected official of a township (township trustee); an elected official of a village (village councilman); a school teacher who has taught in a municipal, joint vocational or local school district; or an employee of a municipality.

R.C. 325.19 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.

Under R.C. 325.19, full-time county employees, upon the attainment of the first year of employment, and annually thereafter, are entitled to eighty hours of vacation leave with full pay. Employees receive increases in the amount of vacation leave to which they are 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 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.

You also ask about R.C. 9.44 which provides as follows:

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.

R.C. 9.44 ensures that a person who is employed by the state or any political subdivision of the state and who is "earning vacation credits currently" is entitled to have his prior service with any of these entities included as service with the state or any political subdivision of the state for purposes of computing his vacation leave. Thus, in addition to the prior service credit authorized by R.C.

325.19, R.C. 9.44 allows a county employee earning vacation credits currently to include prior service with the state in calculating the amount of vacation benefits to which he is entitled.

I note that the term "political subdivision," as used in R.C. 325.19 and R.C. 9.44, is not specifically defined by either statute. A political subdivision has been generally described, however, as "a limited geographical area wherein a public agency is authorized to exercise some governmental function." 1972 Op. Att'y Gen. No. 72-035 (syllabus). See Wolf v. City of Columbus, 98 Ohio App. 333, 129 N.E.2d 309 (Franklin County 1954); 1962 Op. Att'y Gen. No. 2936, p. 261; 1960 Op. Att'y Gen. No. 1736, p. 625; 1960 Op. Att'y Gen. No. 1158, p. 111. Counties are political subdivisions, Schaffer v. Board of Trustees, 171 Ohio St. 228, 168 N.E.2d 547 (1960), State ex rel. Price v. Huwe, 103 Ohio St. 546, 134 N.E. 456 (1921), as are townships, Washington Township v. Rapp, 50 Ohio App. 1, 197 N.E. 413 (Lucas County 1934), 1950 Op. Att'y Gen. No. 2498, p. 730, school districts, Board of Education v. McHenry, 105 Ohio St. 357, 140 N.E. 169 (1922), Board of Education v. Volk, 72 Ohio St. 469, 74 N.E. 646 (1905), Finch v. Board of Education, 30 Ohio St. 37 (1876), 1962 Op. No. 2936, and municipalities, Haverlack v. Portage Homes, Inc., 2 Ohio St. 3d 26, 442 N.E.2d 749 (1982), Wolf v. City of Columbus, 1974 Op. Att'y Gen. No. 74-088 (a municipality is a political subdivision for purposes of R.C. 9.44). See Dunn v. Agricultural Society, 46 Ohio St. 93, 18 N.E. 496 (1888).

It is clear that employment with the various governmental entities listed in your opinion request constitutes service with a political subdivision for purposes of R.C. 9.44 and R.C. 325.19. See 1980 Op. Att'y Gen. No. 80-057; Op. No. 74-088; 1974 Op. Att'y Gen. No. 74-085. See also 1966 Op. Att'y Gen. No. 66-149, 1966 Op. Att'y Gen. No. 66-120. Thus, prior service as either a school teacher or a municipal employee must be credited to county employees pursuant to these statutes for purposes of computing such employees' vacation leave benefits. The question remains, however, whether prior service as a township trustee and a village councilman, both public offices, see State ex rel. v. Kearns, 47 Ohio St. 566, 25 N.E. 1027 (1890), 1980 Op. Att'y Gen. No. 80-035, 1978 Op. Att'y Gen. No. 78-054, 1943 Op. Att'y Gen. No. 6568, p. 733, can be credited to county employees in computing the amount of their vacation leave pursuant to these provisions. As was stated in Op. No. 74-085:

The difficulty results from the fact that public officers, as opposed to public employees, are not entitled to vacation leave. . . . [A]n 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.

Id. at 2-352 to 2-353. See R.C. 9.44; R.C. 325.19; 1962 Op. Att'y Gen. No. 3239, p. 667 (a county officer is not an employee for purposes of R.C. 325.19). See also Op. No. 80-057.

In Op. No. 80-057 (syllabus, paragraph four), my predecessor concluded that: "When a county employee is reemployed by the county after service as a county officer, the years served as a county officer are included as periods of service for purposes of computing vacation leave under R.C. 325.19(A)." This opinion approved and relied on Op. No. 74-085 wherein my predecessor stated at 2-353 that:

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."

Accord 1975 Op. Att'y Gen. No. 75-025 (prior service as a county officer or state officer shall be credited to a state employee in computing the amount of his vacation leave). Under the analysis of these opinions, prior service as the public officers of village councilman and township trustee constitutes service with a political subdivision for purposes of R.C. 9.44 and R.C. 325.19. As noted, however, in Op. No. 80-057:

a county employee who is awarded credit for time served as an officer for purposes of vacation leave does not receive the identical benefit he would have received had he been an employee during the time served as an officer. The effect is not to award vacation leave benefits to a county officer retroactively. . .but is, rather, to enable him to accrue vacation leave as a county employee at a rate which reflects his years of service as an officer.

Id. at 2-227.

In conclusion, it is my opinion, and you are so advised, that for purposes of computing a county employee's vacation benefits, R.C. 325.19 requires a county to give a county employee service credit for periods of prior service as: an elected official of a township (township trustee); an elected official of a village (village councilman); a school teacher who has taught in a municipal, joint vocational or local school district; or an employee of a municipality.