

1302

PUBLIC AGENCIES INCLUDE ONLY STATE— COUNTIES— MUNICIPAL CORPORATION AND BOARDS OF EDUCATION— TRANSFER OF EMPLOYEES FROM ONE PUBLIC AGENCY TO ANOTHER ARE CREDITED WITH THE UNUSED BALANCE OF THEIR ACCUMULATED SICK LEAVE—THIS DOES NOT APPLY TO: EMPLOYEE OF A CITY OR GENERAL HEALTH DISTRICT TRANSFERRING TO STATE DEPARTMENT OF HEALTH—§143.29, R.C.

## SYLLABUS:

1. The term “public agencies” as used in Section 143.29, Revised Code, includes only the state, counties, municipal corporations and boards of education.

2. The provision of Section 143.29, Revised Code, that “an employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave” does not apply to an employee of a city or general health district who transfers to the state department of health.

Columbus, Ohio, April 25, 1960

Hon. Ralph E. Dwork, M.D., Director of Health  
State of Ohio, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“We have a number of employees who have transferred to this department from city general health districts. I respectfully request your opinion as follows in order that we may determine whether they are entitled to be credited with the unused balance of sick leave which they accumulated while employed by a city or general health district:

- “1. Is a city health district a ‘public agency’ as used in section 143.29 of the Revised Code?
- “2. Is a general health district a ‘public agency’ as used in said section?

“Employees of city and general health districts are, of course, not subject to this section of law in respect to accumulating and using sick leave since these districts are not offices of the county service or municipal service, and are not paid in whole or in part

by the state unless payments made pursuant to section 3709.02 of the Revised Code are considered to be part payment of the salary or wages of such employees by the state.

"I have read 1954 Opinions of the Attorney General, Nos. 3643 and 4583. These opinions decided that the term 'public agency' included the state, the several counties, all municipalities and all boards of education, which was sufficient for the purposes of the opinions being rendered. However, no attempt appears to have been made to determine exactly how inclusive this term is as it is used in section 143.29 of the Revised Code.

"Your opinion to the questions herein posed shall also provide us with the key for determining whether or not a person transferring from this department to a city or general health district or an employee transferring between health districts is entitled to be credited with the unused balance of his accumulated sick leave, by virtue of the provisions of section 143.29 of the Revised Code. This of course, is of much concern to us as well as city and general health districts throughout the state."

Section 143.29, Revised Code, formerly Section 486-17C, General Code, to which you refer, reads in part:

"Each full-time employee, whose salary or wage is paid in whole or in part by the state, and each full-time employee in the various offices of the county service and municipal service, and each full-time employee of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth work days with pay. \* \* \* Unused sick leave shall be cumulative up to ninety work days, unless more than ninety days are approved by the responsible administrative officer of the employing unit. The previously accumulated sick leave of an employee who has been separated from the public service may be placed to his credit upon his re-employment in the public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave. \* \* \*"

This section lists several employing units; the state, the county and municipal services, and boards of education, and describes how these agencies must accumulate sick leave time for their employees. The section then goes on to provide for transfers between "public agencies." The question to decide is whether the words "public agencies" apply only to the state, counties, municipal corporations, and boards of education.

Paragraph No. 1 of the syllabus of Opinion No. 3643, Opinions of the Attorney General for 1954, page 128, reads as follows:

"1. The words 'public agency' used in Section 143.29 of the Revised Code include the state, the several counties, all municipalities and all boards of education."

The implication that follows from this direct statement is that the legislature intended not to include more than the enumerated employing units within the meaning of the term "public agency."

To follow this rule of statutory construction in this situation seems to be based upon good reason. Otherwise a public agency that was not bound to accumulate sick leave time in the manner provided by Section 143.29, Revised Code, could allow an employee to accumulate sick leave at more than the rate provided for by that statute. Another public agency would then be bound to accept that accumulated leave time when an employee transfers to it from such an agency. In my opinion this would result in inequities not intended by the legislature.

In your letter you state that employees of city and general health districts are not part of the county service or municipal service, and are not paid in whole or in part by the state unless payments made pursuant to Section 3709.02, Revised Code, are considered to be part payment of the salary or wages of such employees by the state.

Section 3709.01, Revised Code, pertaining to health districts, reads in part:

"The state shall be divided into health districts. Each city constitutes a health district and shall be known as a 'city health district.'

"The townships and villages in each county shall be combined into a health district and shall be known as a 'general health district.'

"\* \* \*"

Regarding a city health district, it was held in the case of *State, ex rel. Hanna v. Spittler*, 47 Ohio App. 114, that a board of health of a city health district is a governmental agency separate and distinct from the municipality and not subject to its jurisdiction.

In Opinion No. 4244, Opinions of the Attorney General for 1932, page 549, at page 552 the then Attorney General stated:

"It is therefore apparent that a general health district is a separate and distinct department or branch of the state sovereignty and that the legislature has placed no authority, jurisdiction or control over it in the county commissioners."

In accordance with the above I am of the opinion that a city health district and a general health district are each separate and distinct agencies of government and not a part of municipal or county government, as such.

It is true that Section 3709.32, Revised Code, provides for the state to reimburse general and city health districts for salaries paid to a health commissioner, a public health nurse, and a clerk. The total amount of this reimbursement is \$1,000.00. This appears to me to be at most an indirect payment to these employees. The money does not go directly to the employees but to the general funds of the health district after these employees have been paid. Thus, this seems to be a formula for state financial aid to health districts rather than payment of a salary "in whole or in part" to an employee, and could not be construed to put such employees within the purview of Section 143.29, Revised Code.

Accordingly, it is my opinion and you are advised:

1. The term "public agencies" as used in Section 143.29, Revised Code, includes only the state, counties, municipal corporations and boards of education.
2. The provision of Section 143.29, Revised Code, that "an employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave" does not apply to an employee of a city or general health district who transfers to the state department of health.

Respectfully,

MARK McELROY  
Attorney General