

## OPINION NO. 72-065

## Syllabus:

The death benefit provided in Section 7 of Amended Substitute House Bill No. 147 is available to employees of the state who die while on authorized leave of absence, to employees who die while on disability leave, and to employees who die while on part-time status, but is not available to employees who die while on layoff status.

To: Paul A. Corey, Director, Department of State Personnel, Columbus, Ohio

By: William J. Brown, Attorney General, August 9, 1972

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

"Section 143.61 of the Ohio Revised Code provides for the payment of a death benefit to the designated beneficiary of an employee of the state. In attempting to institute this program four questions have arisen which we feel will require a formal opinion of your office. They are as follows:

"1. Is Section 143.61 Ohio Revised Code applicable when the employee dies while on authorized leave of absence?

"2. Is Section 143.61 Ohio Revised Code applicable when the employee dies while on disability leave?

"3. Is Section 143.61 Ohio Revised Code applicable to part-time employee who dies?

"4. Is Section 143.61 Ohio Revised Code applicable when the employee dies when in lay-off status?"

In answering your questions I am assuming that you are referring to Section 7 of Amended Substitute Senate Bill No. 147 rather than Section 143.61, Revised Code.

Section 7, which was passed January 5, 1972, effective January 20, 1972, reads as follows:

"Until a group life insurance program is instituted as required by section 143.61 of the Revised Code, the following program shall be immediately available and shall terminate no later than July 1, 1972: upon the death of any state employee paid directly by a warrant of the state auditor, a death benefit shall be paid to his designated beneficiary, in accordance with the following schedule:

After one year of continuous state  
service----\$2,000.00  
After two years of continuous state  
service----\$4,000.00  
After three years of continuous state  
service----\$6,000.00  
After four years of continuous state  
service----\$8,000.00  
After five years of continuous state  
service----\$10,000.00

"The director of state personnel shall adopt administrative rules governing the administration of this benefit, including eligibility requirements, beneficiary designation, and all other necessary procedures."  
(Emphasis added.)

According to Section 7, the only requirement for eligibility for death benefits is that the employee be paid "directly by a warrant of the state auditor." If this provision is satisfied then the designated beneficiary shall receive the death benefit if the employee should die.

Since this provision is new there are no Opinions on point, but the subject of employee sick leave has been discussed by one of my predecessors. Branches 1 and 2 of the Syllabus of Opinion No. 604, Opinions of the Attorney General for 1957, read as follows:

"1. A physician duly employed as a part-time consulting physician in the Columbus State School, his employment being by the month, and it being stipulated that he was to be paid at a certain hourly rate for not to exceed seventy-six hours per month, is an employee of the state within the purview of Section 143.29, Revised Code, relating to sick leave.

"2. Under the provisions of Section 143.29, Revised Code, a provisional employee of the state or one who renders part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked, at the same rate as that granted full-time employees."

Section 143.29, Revised Code, which the above Opinion construes, reads, in part, as follows:

"Each employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county service and municipal service, and each employee of any board of education for whom sick leave is not provided by section 3319.141 [3319.14.1] of the Revised Code, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay.\* \* \*" (Emphasis added.)

The underlined portion of Section 143.29 is similar to the

language of Section 7. According to Opinion No. 604, *supra*, even though the employee is not on full-time status, the fact that he is an employee entitles him to the benefit of sick leave. It appears from this Opinion that the only condition precedent to receiving sick leave is that the person be a state employee. This is closely analogous to the situation which you present in that the only condition precedent to receiving death benefits, according to section 7, is that the person be a "state employee paid directly by a warrant of the state auditor."

A question remains, however, as to what constitutes a state employee. To determine that we must examine Section 143.01 (F), Revised Code, which reads as follows: "'Employee' signifies any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer." Whether the employee is on a leave of absence, disability leave, or is a part-time employee, he would fit the definition of "employee" by being subject to "appointment, removal, promotion, or reduction by an appointing officer." Therefore, these circumstances would not in any way affect the eligibility of a person to receive death benefits so long as that person is, at the time of his death, an employee paid directly by a warrant of the State Auditor. The phrase, "paid directly by a warrant of the state auditor", is apparently intended to exclude those employees who are indirectly paid by other tax moneys, such as state university employees. I see no indication of an intent to impose a requirement that the employee actually be receiving pay checks at the time of his death.

Layoff, however, appears to be a termination of employee status. Under Section 143.13, Revised Code, the Director of State Personnel promulgates rules for certain purposes, among them the following:

"(B) For appointment, promotions, transfers, layoffs, suspensions, reductions, reinstatements, and removals. \* \* \*." (Emphasis added.)

The administrative Rules of the Director of State Personnel defines "layoff" in Rule PL-35-18, as follows:

"LAYOFF - The temporary vacating of a position by a department for reasons of economy or lack of work. The position may be filled at a later date and remains on the table of organization."

The apparent purpose of this language is to preserve the position. Nothing is said about preserving the employee's status. Rule PL-31-01 authorizes layoff as follows:

"Whenever it is necessary because of lack of work or funds or whenever it is advisable in the interest of economy to reduce the staff of an agency, the appointing authority shall lay off employees pursuant to the following rules and regulations. \* \* \*"

Layoff, as defined by the Rules, is the counterpart of removal. In the latter, the employment is terminated for misbehavior; in the former, for lack of work. However, the certified employee who is laid off is entitled to be placed at the head of an appropriate eligible list, under Rule PL-31-06. In effect, he has returned to the status he held before he was employed. I

conclude that an employee who is laid off is no longer an employee of the state, and consequently is not entitled to a death benefit under Section 7.

In specific answer to your questions it is my opinion, and you are so advised, that the death benefit provided in Section 7 of Amended Substitute House Bill No. 147 is available to employees of the state who die while on authorized leave of absence, to employees who die while on disability leave, and to employees who die while on part-time status, but is not available to employees who die while on layoff status.

### OPINION NO. 72-066

#### Syllabus:

The position of teacher in a community college is compatible with that of county commissioner of a county which is part of the community college district.

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To: Fred V. Skok, Pros. Atty., Lake County, Painesville, Ohio  
By: William J. Brown, Attorney General, August 10, 1972

I have before me your request for my opinion, which asks the following question:

"Is the office of County Commissioner incompatible with the position of a full-time tenured, salaried teacher in a community college, some of whose trustees are appointed by the Lake County Commissioners?"

You also ask whether these positions would be incompatible if the teacher is not full time and does not have tenure.

Several Sections of the Ohio Revised Code are pertinent to your question. Section 3354.05, Revised Code, provides that:

"Within ninety days after a community college district has been declared to be established, pursuant to provisions of sections 3354.02 to 3354.04, inclusive, of the Revised Code, nine persons, all of whom shall be residents of the district, shall be appointed as a board of trustees of the community college district. Six trustees shall be appointed by the board of county commissioners or boards of county commissioners of such district and three trustees shall be appointed by the governor, with the advice and consent of the senate. At the time of the initial meeting of the trustees a drawing shall be held to determine the initial term of each appointee, one for a term of two years, three for terms of three years, three for terms of four years, and two for terms of five years. At the expiration of each such