

Note from the Attorney General's Office:

1985 Op. Att'y Gen. No. 85-093 was limited by
1988 Op. Att'y Gen. No. 88-089.

1985 Op. Att'y Gen. No. 85-093 was overruled by
2003 Op. Att'y Gen. No. 2003-021.

OPINION NO. 85-093**Syllabus:**

1. Pursuant to R.C. 9.44 and R.C. 325.19, a full-time county probation officer who has accumulated twenty-five years of prior service as a municipal police officer and county employee shall have earned and is entitled to two hundred hours of vacation leave with full pay.
2. Pursuant to R.C. 325.19, a county probation officer is entitled to vacation credit for prior service as a municipal police officer even though such prior service was followed by a term of unemployment or nonpublic employment due to retirement from such prior service. (1983 Op. Att'y Gen. No. 83-019, approved and followed.)

**To: Lynn Alan Grimshaw, Scioto County Prosecuting Attorney, Portsmouth,
Ohio**
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985

I have before me your opinion request concerning the amount of vacation leave to which a county employee is entitled under R.C. 325.19. The facts underlying your request letter are as follows:

The Scioto County Court of Common Pleas has hired a new probation officer. The individual hired previously worked as a police officer for the city of Portsmouth and retired from that position a few years ago....The probation officer has worked for over twenty-five years for the city of Portsmouth and Scioto County combined.

On the basis of the above facts, you ask whether the new county employee is entitled to two hundred hours of vacation leave with pay per year, and what effect, if any, the prior retirement of the employee has upon the calculation of his vacation leave.

I turn now to your first question in which you ask whether R.C. 325.19 requires a county to credit a county probation officer with two hundred hours of vacation leave with full pay when such individual has accumulated more than twenty-five years of prior service as a municipal police officer and county employee. R.C. 325.19 governs vacation leave for county employees and clearly applies to an individual who is hired as a probation officer by a court of common pleas. R.C. 2301.27 provides for the establishment of a county department of probation and the appointment of probation officers by the court of common pleas, and reads: "All positions within such department of probation shall be in the classified service of the civil service of the county."

The pertinent provisions of R.C. 325.19 read 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. (Emphasis added.)

Under R.C. 325.19, each full-time employee of the county, see R.C. 325.19(G)(1) (defining "full-time employee" as used in

R.C. 325.19), upon the attainment of the first year of employment, and annually thereafter, is entitled to eighty hours of vacation leave with full pay. R.C. 325.19 establishes increases in the amount of vacation leave to which a full-time employee is entitled after eight, fifteen and twenty-five years of service. Thus, pursuant to R.C. 325.19, the amount of vacation leave to which a full-time employee of the county 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 1984 Op. Att'y Gen. No. 84-055; 1982 Op. Att'y Gen. No. 82-093.

It is also instructive to examine R.C. 9.44, concerning the computation of vacation leave for public employees. R.C. 9.44 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.

Under R.C. 9.44, 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 employers included as service with his current employer for purposes of computing the amount of his vacation leave. Thus, in addition to the prior service credit authorized by R.C. 325.19, R.C. 9.44 permits a county employee, who is earning vacation credits currently, to include prior service with the state or any political subdivision of the state in calculating the amount of vacation benefits to which he is entitled. Op. No. 84-055 at 2-182 to 2-183.

There is no statutory definition of the term "political subdivision" as used in R.C. 325.19 and R.C. 9.44. On a recent occasion, however, I concluded that employment with a municipality constitutes service with a political subdivision for purposes of R.C. 325.19 and R.C. 9.44. Op. No. 84-055 at 2-185. See 1974 Op. Att'y Gen. No. 74-088 (a municipality is a political subdivision for purposes of R.C. 9.44). Thus, prior service as a municipal police officer must be included pursuant to R.C. 325.19 and R.C. 9.44 in determining the amount of vacation leave to which a county probation officer is entitled. Further, R.C. 325.19 specifically provides that service with the county shall be counted in determining a county employee's vacation leave. Therefore, in response to your first question, I conclude that pursuant to R.C. 9.44 and R.C. 325.19, a full-time county probation officer who has accumulated twenty-five years of prior service as a municipal police officer and as a county employee shall have earned and is entitled to two hundred hours of vacation leave with full pay.

In your second question, you ask about the effect, if any, a county probation officer's prior retirement from municipal service has upon the calculation of vacation leave benefits under R.C. 325.19. In 1983 Op. Att'y Gen. No. 83-019, I addressed the question whether R.C. 325.19 requires that a

county employee's service be uninterrupted in order to be included as prior service credit for purposes of computing the vacation benefits to which the employee is entitled under that statute. On the basis of the plain language of the statute, see Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph two), I opined that, "[r]egardless of whether a county employee's service with the county or any political subdivision of the state has been continuous, R.C. 325.19 entitles the employee to credit for any such prior service for purposes of computing the amount of vacation leave to which he is entitled under that statute." Op. No. 83-019 (syllabus); 1958 Op. Att'y Gen. No. 2575, p. 510. I am unaware of any legislative changes to R.C. 325.19, since the issuance of Op. No. 83-019, and I believe that Op. No. 83-019 remains a correct interpretation of R.C. 325.19. Thus, I conclude that pursuant to R.C. 325.19, a county probation officer is entitled to vacation credit for prior service as a municipal police officer even though such prior service was followed by a term of unemployment or nonpublic employment due to retirement from such prior service.

In summary, it is my opinion, and you are so advised that:

1. Pursuant to R.C. 9.44 and R.C. 325.19, a full-time county probation officer who has accumulated twenty-five years of prior service as a municipal police officer and county employee shall have earned and is entitled to two hundred hours of vacation leave with full pay.
2. Pursuant to R.C. 325.19, a county probation officer is entitled to vacation credit for prior service as a municipal police officer even though such prior service was followed by a term of unemployment or nonpublic employment due to retirement from such prior service. (1983 Op. Att'y Gen. No. 83-019, approved and followed.)