

OPINION NO. 67-003**Syllabus:**

1. A non-teaching employee of any school district who works twelve months a year accumulates one and one-fourth days of sick leave credit for each month actually worked.

2. Whether a non-teaching employee who works nine or ten months in a calendar year and is paid in nine, ten or twelve equal monthly installments, is entitled to one and one-fourth days of sick leave credit for each month of the year depends upon whether he is employed on an annual basis under the provisions of Section 3319.081, Revised Code, and must therefore be considered a full-time employee under Section 143.29, Revised Code, entitled to accumulate sick leave credit for each completed month of service during the calendar year which is included in his contract of employment, or whether he is employed by a city school district under the auspices of a Municipal Civil Service Commission and must therefore be considered a part-time employee under Section 143.29, Revised Code, entitled to accumulate sick leave credit for each month actually worked.

To: Archer E. Reilly, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 6, 1967

I have before me a request for my opinion from the Auditor of State which reads in pertinent part as follows:

"Your opinion is requested on a number of questions respecting the crediting of sick leave for non-teaching employees in the public schools of Ohio.

"Non-teaching employees in various occupational groups work different periods of time for different boards of education. The school year in most districts is nine or ten months in length. In such districts, cafeteria workers, secretaries, bus drivers, and some custodians generally work nine or ten months in each calendar year. In the same district, the maintenance men and some custodians may work eleven or twelve months in each calendar year. Further, some school

districts pay non-teaching employees in nine or ten equal monthly installments, whereas other school districts pay such employees in twelve monthly installments.

"A previous attorney general ruled in 1950 O.A.G. No. 1605 that G.C. 4834-5a (Section 3313.21, Revised Code) and G.C. 4842-7 (Sections 3319.08 and 3319.09, Revised Code) merely established minimums 'for time lost due to illness or otherwise' and that sick leave rights of full-time employees of boards of education should be determined in accordance with G.C. 486-17c (Section 143.29, Revised Code). * * *

"Under Section 143.29, Revised Code, the following questions are submitted for your opinion:

"1. Does a non-teaching employee who works twelve months in a calendar year and who is paid in twelve equal monthly installments accumulate one and one-fourth days of sick leave credit for each month actually worked, or fifteen days per year?

"2. Does a non-teaching employee who works nine or ten months in a calendar year and who is paid in twelve equal monthly installments accumulate one and one fourth days of sick leave for each of the nine or ten months actually worked, or does he accumulate one and one-fourth days of sick leave for twelve months for a total of fifteen days sick leave credit per year?

"3. Does a non-teaching employee who works nine or ten months in a calendar year and who is paid in nine or ten equal monthly installments accumulate one and one-fourth days of sick leave for each of the nine or ten months actually worked or does he accumulate one and one-fourth days of sick leave for twelve months for a total of fifteen days sick leave credit per year? * * *

"As the questions regarding the amount of sick leave credits to which a non-teaching employee of a school district is entitled are of statewide interest, will you please issue your formal opinion at an early date."

Section 143.29, Revised Code, which is referred to in the request letter is the pertinent statute relating to sick leave benefits for non-teaching employees in the public schools of Ohio, and it provides in pertinent part as follows:

"* * * 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. * * *

Thus, a non-teaching employee of any board of education who works twelve months in a calendar year is entitled to accumulate one and one-fourth days of sick leave credit for each month in the year or fifteen days per year. He is a full-time employee, and the answer to the first inquiry must be in the affirmative.

The second and third questions pose a more difficult problem. The basic issue is, whether a non-teaching employee who works nine or ten months out of a twelve month calendar year is entitled to accumulate sick leave credit for each month of the year, or is he only entitled to accumulate sick leave credit for the nine or ten months he actually works. The answer to this question depends upon whether or not an employee in this position is considered to be a full-time employee. If he is, then he is entitled to fifteen days sick leave credit. If the employee is considered to be a part-time employee then he is only entitled to sick leave credit for months actually worked.

Initially, let me state that the number of installments or the times of paying wages or salary is not dispositive in any way of a non-teaching employee's right to sick leave credit under Section 143.29, Revised Code. Consequently, no valid distinction may be made on the basis that some employees work nine or ten months and are paid in twelve equal monthly installments and some employees work nine or ten months and are paid in nine or ten equal monthly installments.

One of my predecessors in Opinion No. 3575, Opinions of the Attorney General for 1954, page 75, considered essentially the same issue as raised in the opinion request letter, although the question there presented involved teachers.

The first and third branch of the syllabus of that opinion provides, in part, as follows:

"1. A teacher employed in the public schools under a contract for one or more years, or under a continuing contract, is a full time employee within the purview of Section 143.29, Revised Code (486-17c, General Code), relating to sick leave and notwithstanding that his active service may be performed during only a portion of the year, is entitled to sick leave credit for each completed month of service during the calendar year which is included in his contract of employment. Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, approved.

"3. The salary of a teacher is on an annual basis and the number of installments or the times of paying the same do not in any way affect a teachers right to

sick leave credit as determined by Section 143.29, Revised Code, 486-77c, G.C., * * *"
(Emphasis added)

Section 3319.081, Revised Code, deals with the employment of non-teaching employees of school districts wherein the provisions of Section 143.01 to 143.48, inclusive, of the Revised Code do not apply. This section, like those involving teachers, requires contracts of employment to be made for the employment of all non-teaching employees. This statute plainly indicates that, like teachers, these non-teaching employees are to be employed by the year and that their salary is on an annual basis. No valid distinction may be drawn between teaching and non-teaching employees who are under a contract of employment. The rationale employed in Opinion No. 3575, supra, applies with equal force to non-teaching employees who have a contract under the provisions of Section 3319.081, supra, and who are employed by local, exempted village, or county school districts. These non-teaching employees are full-time employees within the purview of Section 143.29, Revised Code.

The only type of school district wherein the provisions of Section 3319.081, supra, do not apply is a city school district. Section 143.30, Revised Code, provides for the establishment of a municipal civil service commission in city school districts and for the enactment of rules not inconsistent with Sections 143.01 to 143.08, supra. Non-teaching employees in these districts do not have individual contracts of employment as do their counterparts in other school districts. It therefore follows that non-teaching employees of city school districts are clearly subject to that provision of Section 143.29, Revised Code, which also provides in pertinent part as follows:

"* * * Provisional appointees, or those who render 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.* * *"
(Emphasis added)