

OPINION NO. 72-103

Syllabus:

Section 3319.084, Revised Code, only allows a board of education to pay a prorated portion of unused vacation leave for any current year to a nonteaching employee when such employee's service is terminated by death.

To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio
By: William J. Brown, Attorney General, November 8, 1972

Your request for my opinion asks the following question:

May a local board of education pay a terminating nonteaching school employee a prorated portion of his earned unused vacation leave?

The statutory authority for paid vacation leave to nonteaching employees appears in Section 3319.084, Revised Code, which reads as follows:

"In all school districts each full-time nonteaching school employee including full-time hourly-rate and per diem employees, after service of one calendar year with a board of education, shall be entitled, during each year thereafter, while continuing in the employ of such board of education, to vacation leave with full pay for a minimum of two calendar weeks, excluding legal holidays. Employees continuing in the employ of such board of education for fifteen or more years of service shall be entitled to vacation leave with full pay for a minimum of three calendar weeks, excluding legal holidays.

"In case of the death of a nonteaching school employee, the unused vacation leave to the credit of such employee, not to exceed the vacation leave accrued to his credit for two years immediately preceeding his last anniversary date and the pro-rated portion of his earned but unused vacation leave for the current year,

shall be paid to the surviving spouse, or other dependent.

" * * * * * * * * * * * * * * *"
(Emphasis added.)

It is elementary that the meaning of a statute must, in the first instance, be found in the language in which the statute is framed, and if that language is plain and unambiguous, it must be taken as the final expression of the legislative intent, and is not to be added to or subtracted from by evidence from any extraneous source. Katz v. Department of Liquor Control, 166 Ohio St. 229, 231 (1957); Mackenzie v. Hare, 239 U.S. 249, 36 S. Ct. 106 (1915); Caminetti v. United States, 242 U.S. 470, 37 S. Ct. 192 (1917). The intent of the legislature must be gathered from the language used, and the language should be construed in the common acceptance of the meaning of the words used, in the absence of anything in the statute to the contrary. Cooper v. Hughes, 39 Ohio App. 281, 177 N.E. 475 (1931).

A close reading of Section 3319.084 shows that there is a provision for proration of unused vacation leave, but only upon the death of the nonteaching employee. The statute is void of any other provision for prorated unused vacation leave. The absence of any other explicit provision for proration compels the conclusion that proration should only be allowed upon the death of the nonteaching employee.

This construction is supported by the fact that, as originally enacted, the Section contained no provision at all for proration of unused vacation leave. By amendment in 1965 it was allowed upon the death of the employee. 131 Ohio Laws 802, 1678. There is nothing to justify an extension of this exception.

In specific answer to your question it is my opinion, and you are so advised, that Section 3319.084, Revised Code, only allows a board of education to pay a prorated portion of unused vacation leave for any current year to a nonteaching employee when such employee's service is terminated by death.