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1. EMPLOYED PERSONS—BY BOARD OF EDUCATION—FULL TIME EMPLOYEES IF EMPLOYED FOR PARTICULAR LINE OF WORK—MUST ENCOMPASS ALL AVAILABLE OPPORTUNITY TO WORK IN PARTICULAR OCCUPATION—ANNUAL BASIS OR OTHERWISE—CONTINUOUSLY EMPLOYED.
2. TEACHERS EMPLOYED FOR ONE HUNDRED AND TWENTY DAYS A YEAR—EIGHT MONTHS SCHOOL YEAR—LONGER PERIODS IN GIVEN YEAR—FULL TIME EMPLOYEES—SECTION 486-17c G. C., H. B. 109, 98 GENERAL ASSEMBLY.
3. NO CONFLICT AS TO SECTIONS 486-17c, 4834-5a, 4842-7 G. C.—“TIME LOST DUE TO ILLNESS OR OTHERWISE”—SECTIONS SHOULD BE CONSTRUED IN PARA MATERIA.
4. SICK LEAVE RIGHTS—FULL TIME EMPLOYEES—EMPLOYEES NOT CLASSIFIED AS FULL TIME—SECTIONS 486-17c, 4834-5a G. C.
5. COMPLETED MONTH — “EXISTING UNUSED SICK LEAVE CREDIT”—ATTENDANCE RECORDS—OCTOBER 25, 1949, EFFECTIVE DATE OF AMENDMENT, SECTION 486-17c G. C.

SYLLABUS:

1. Persons employed by a board of education are full time employes of such

board if such employment for the particular line of work encompasses all of the available opportunity to work in the particular occupation and includes, among others, all those employed on an annual basis or otherwise continuously employed.

2. Teachers employed to teach one hundred and twenty days a year, commonly referred to as an eight-months school year, or longer periods in a given school year, are full time employees of a board of education within the meaning of Section 486-17c, General Code, as amended by the 98th General Assembly, House Bill 109, effective October 25, 1949.

3. There is no conflict as to Section 486-17c, *supra*, Section 4834-5a, General Code, amended by the 98th General Assembly, A. S. H. B. 267, effective October 20, 1949, and Section 4842-7, General Code, for the reason that the latter two sections establish minimums "for time lost due to illness or otherwise." Interpretations of statutes giving rise to conflicts are not favored in the law. All three sections referred to should be construed in *para materia*, and each given full effect according to its terms.

4. Sick leave rights of full time employes of boards of education should be determined in accordance with Section 486-17c, *supra*, rather than Section 4834-5a, *supra*, and the former section is controlling to employes not classified as full time employes.

5. While the computation of a completed month, under the terms of Section 486-17c, *supra*, should be made for months of service completed after the effective date of the amendment thereof, to-wit: October 25, 1949, recognition is required to be given to "existing unused sick leave credit" according to the plan in operation in the school district prior to such date if "attendance records are maintained and credit has been given employes for unused sick leave," as provided in said section.

Columbus, Ohio, March 30, 1950

Bureau of Inspection and Supervision of Public Offices

Columbus, Ohio

Gentlemen :

Your request for my opinion is as follows :

"Attention is directed to the provisions of G. C., Section 486-17c and G. C., Section 4834-5a, as the same pertain to sick leave privileges or rights respecting employes of a board of education.

"In view of the fact that these sections appear to be somewhat in conflict, your opinion is respectfully requested in reference to the following questions :

"(a) What is the correct legal definition or meaning of the term "full time employe" of a board of education? Is a teacher who is employed for a school term of one hundred and eighty days a full time employe, or is such meaning restricted to em-

ployes of a board of education who are employed for the entire school year?

“(b) Are the sick leave rights or privileges of a full time employe of a board of education to be determined or regulated by the provisions of G. C., Section 486-17c, or are such rights or privileges subject to the provisions of G. C., Section 4834-5a? Which of the above sections apply, and to what extent, to employes of a board of education who are not classified as full time employes?”

“(c) Does the computation of a completed month of service of an employe of a board of education, as the term is used in G. C., Section 486-17c, begin with each completed month of service subsequent to the effective date of the above section as amended by H. B. 109, effective on October 25, 1949?”

Your first question relates to the meaning of the term “full time employe” of a board of education. In connection with that question you ask whether a teacher employed “for a school term of one hundred and eighty days” is a full time employe or whether the term includes only employes “who are employed for the entire school year.”

It is obvious, of course, that a person who works by the year and who devotes what for the particular calling amounts to full time is a full time employe. In the case of *Beaver Dam Coal Company v. Hocker*, 202 Ky. 398, it was held that working at full time means the time during which the employe is offered employment and does not include the time when he has no opportunity to work. In the case of *Cote v. Bachelder-Worcester Company*, 160 A. 101, it was held that full time, for the purpose of the compensation law, signifies normal and customary period of labor for the kind of work the employe performs. This case discussed the distinction between “full time,” “part time,” and “over time.”

A contract requiring the employe to give full time to the company's service was held in *Johnson v. Stoughton Wagon Company*, 118 Wisc. 438, not to require the employe to work twenty-four hours a day, nor every moment of his waking hours. The employe was held to have satisfied the requirements of the contract if he made that work his business to the exclusion of another business.

In the case of *Hendricks v. Smith*, 251 Ky. 699, it was held that “full time,” as a basis for determining average weekly wages of an injured employe, means the time during which the employe is offered employ-

ment and excludes the time during which he has no opportunity to work. For a case in which a teacher who had been appointed as a substitute teacher but worked regularly and was held to be within the definition of a "full time" teacher, see *Aebli v. Board of Education*, 62 Cal. App. 2d 706.

Teachers have been repeatedly held to be employes and not officers. See *Board of Education v. Ballou*, 21 Cal. App. 2d 52; *Regents, etc., v. Blanton*, 49 Ga. App. 602; *Mootz v. Belyea*, 60 N. D., 741.

They are neither agents nor officers, but employes, and their salaries may be changed after their election or appointment. See *Wiley v. Board of Education, etc.*, 225 Mich. 237; *Woodman v. Hemet, etc.*, 136 Cal. App. 544.

The Ohio school laws require the boards of education, under the provisions of Section 4842-7, General Code, to "*enter into contracts for the employment of all teachers.*" (Emphasis mine) In the section just referred to it is provided that contracts for the employment of teachers are limited to two types, one referred to as a "limited contract" and the other referred to as a "continuing contract." It is further provided that the term "year" shall mean "actual service of not less than one hundred and twenty days within a school year."

The language used is perhaps more readily understood if it be pointed out that the school year of one hundred and twenty days is what is ordinarily referred to as an eight-months school year while the school year of one hundred and eighty days, to which you refer in your letter, is what is commonly referred to as a ten-months school year.

Section 486-17c, General Code, referred to in your letter, was amended by the 98th General Assembly in House Bill No. 109 and became effective October 25, 1949. The title of this bill as originally introduced indicated that it was designed to apply to "employes in the county service," whereas, by amendments made in the House on March 21, 1949 and further amendments made on the floor of the Senate on July 6, 1949, the scope of the measure was broadened. In both the House and the Senate unanimous approval was given to this measure. Section 486-17c, *supra*, reads as follows:

"Each full-time employe, whose salary or wage is paid in

whole or in part by the state of Ohio and each full-time employe in the various offices of the county service and municipal service, and each full-time employe of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth ($1\frac{1}{4}$) work days with pay. Employes may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employes, and to illness or death in the employe's immediate family. Unused sick leave shall be cumulative up to ninety (90) work days unless more than ninety (90) days are approved by the responsible administrative officer of the employing unit. The previously accumulated sick leave of an employe who has been separated from the public service may be placed to his credit upon his re-employment in the public service. An employe who transfers from one public agency to another public agency shall be credited with the unused balance of his accumulated sick leave. 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 employes herein. The responsible administrative officer of the employing unit may require the employe to furnish a satisfactory affidavit to the effect that his absence was caused by illness due to any of the foregoing causes. This act shall be uniformly administered as to employes in each agency of the state government.

"Nothing in this act shall be construed to interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employes for unused sick leave."

It will be noted that the terms used are very broad. Your letter suggests that the section just above cited may be in conflict with Section 4834-5a. This latter section was amended by the 98th General Assembly in Amended Substitute House Bill 267, effective October 20, 1949. As amended, Section 4834-5a, *supra*, reads as follows:

"All full time employes of a board of education, except those employed on hourly rates, must be paid regular compensation for time lost due to illness or otherwise for not less than five days annually as authorized by regulations which each board shall adopt."

I also desire to call your attention to the provisions of Section 4842-7, which provides in part as follows:

"The board of education of each city, exempted village and

local school district shall enter into contracts for the employment of all teachers and shall fix their salaries which may be increased but not diminished during the term for which the contract is made except as provided in section 4842-9 of the General Code. * * * Teachers must be paid for all time lost when the schools in which they are employed are closed owing to an epidemic or other public calamity, and for time lost due to illness or otherwise for not less than five days annually as authorized by regulations which each board of education shall adopt.

“Contracts for the employment of teachers shall be of two types; limited contracts and continuing contracts. A limited contract for a superintendent shall be a contract for such term as authorized by section 4842 of the General Code, and for all other teachers, as hereinafter defined, for a term not to exceed five years. A continuing contract shall be a contract which shall remain in full force and effect until the teacher resigns, elects to retire, or is retired pursuant to section 7896-34 of the General Code, or until it is terminated or suspended as provided by law and shall be granted only to teachers holding professional, permanent or life certificates.

“The term ‘teacher’ as used in this act shall be deemed to mean and include all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents or in any other educational position for which the employing board requires certification.

“‘Year’ as applied to term of service for the purposes of this act means actual service of not less than one hundred and twenty days within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement with full credit for service.

“‘Continuing service status’ for a teacher means employment under a continuing contract.”

Section 4842-7, *supra*, so far as payment of regular compensation “for time lost due to illness or otherwise,” is substantially in identical terms with that found in Section 4834-5a. Such language first appeared in Section 4842-7, *supra*, when that section was amended effective October 12, 1945.

As before pointed out, if two sections of the statutes dealing with the same subject matter are in conflict, the one later enacted is held to be the latest expression of the will of the General Assembly and hence is controlling. However, interpretations giving rise to a conflict are not favored in law and wherever possible effect is given to all statutes.

A careful reading of the provisions of Section 4834-5a, supra, and Section 4842-7, supra, will disclose that they are not in conflict with the provisions of Section 486-17c. Section 4834-5a, supra, and Section 4842-7, supra, establish minimums and provide in substance that the affected employees must be paid for not less than five days absence when such absence is "due to illness or otherwise." This is to be made effective by regulation adopted by the board of education. It does not appear, so far as these two sections of the school law are concerned, that the boards of education would be prevented in such regulation from establishing a higher number of days than five days for the reason that the statutes merely provide minimums. It should also be pointed out that the said school law provisions apply not only to illness but to absence due to other causes, for the express language in both the said school sections is "for time lost due to illness or otherwise."

Nor is any special significance to be attached to the fact that one of the school provisions refers to all full time employes except those on an hourly rate, while the other refers to teachers, for the reason as above pointed out that teachers are included within the term "employes." In this connection attention is invited to the provisions of Section 4834-5, giving the boards of education power to make rules and regulations governing not only itself and the pupils, but also "its employes."

There can be no question but that the power of the board of education to make rules and regulations of a reasonable nature and not in conflict with law extends to teaching employes as well as to non-teaching employes. In the section last above referred to, authority is given to compensate school employes who are absent for the purpose "of attending professional meetings." Professional meetings ordinarily are gatherings of persons who are engaged in a profession, and certainly teachers constitute one of the largest groups among employes of a board of education who are engaged in a profession, and hence would be permitted to attend professional meetings. Yet in this section the General Assembly has used the term "any employe" in defining those who may attend such professional meetings.

In Section 486-17c, supra, the language is broad and sweeping. It deals with (1) each full time employe, whose salary or wage is paid in full or in part by the state of Ohio; (2) each full time employe in the

various offices of the county service and municipal service, and (3) each full time employe of any board of education. In the next to final paragraph of this section there appears the following: "This act shall be uniformly administered as to employes in each agency of the state government."

Hence it is my opinion, and I so advise you, that the various sections above referred to are not in conflict but rather are in para materia.

In light of the foregoing, and in answer to your questions, it is my opinion that:

1. Persons employed by a board of education are full time employes of such board if such employment for the particular line of work encompasses all of the available opportunity to work in the particular occupation and includes, among others, all those employed on an annual basis or otherwise continuously employed.

2. Teachers employed to teach one hundred and twenty days a year, commonly referred to as an eight-months school year, or longer periods in a given school year, are full time employes of a board of education within the meaning of Section 486-17c, General Code, as amended by the 98th General Assembly, House Bill 109, effective October 25, 1949.

3. There is no conflict as to Section 486-17c, supra, Section 4834-5a, General Code, amended by the 98th General Assembly, Amended Substitute House Bill 267, effective October 20, 1949, and Section 4842-7, General Code, for the reason that the latter two sections establish minimums "for time lost due to illness or otherwise." Interpretations of statutes giving rise to conflicts are not favored in the law. All three sections referred to should be construed in para materia, and each given full effect according to its terms.

4. Sick leave rights of full time employes of boards of education should be determined in accordance with Section 486-17c, supra, rather than Section 4834-5a, supra, and the former section is controlling to employes not classified as full time employes.

5. While the computation of a completed month, under the terms of Section 486-17c, supra, should be made for months of service completed after the effective date of the amendment thereof, to-wit: October 25, 1949, recognition is required to be given to "existing unused sick leave credit" according to the plan in operation in the school district prior to

such date if "attendance records are maintained and credit has been given employes for unused sick leave," as provided in said section.

Respectfully,

HERBERT S. DUFFY,
Attorney General.