

OPINION NO. 94-078

Syllabus:

R.C. 124.38(C) does not entitle a person who becomes employed by a general health district to receive credit for unused sick leave accumulated under that statute during prior employment in the "public service."

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, November 29, 1994

You have requested an opinion on the following question: "Whether a general health district must permit a part-time employee who does not receive sick leave benefits to utilize prior accrued sick leave under a different appointing authority under [R.C. 124.38(C)]?"

Sick Leave Benefits Granted by R.C. 124.38

R.C. 124.38 provides minimum sick leave benefits for "[e]mployees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees, as defined in [R.C. 5126.20], of county boards of mental retardation and developmental disabilities," R.C. 124.38(A), "[e]mployees of any state college or university," R.C. 124.38(B), and "[e]mployees of any board of education for whom sick leave is not provided by [R.C. 3319.141]," R.C. 124.38(C). See *Ebert v. Stark County Board of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). A general health district, however, is a political subdivision separate from the entities named in R.C. 124.38. See 1983 Op. Att'y Gen. No. 83-060. Because a general health district is not named in R.C. 124.38, its employees are not entitled to receive sick leave benefits under that statute. Op. No. 83-060; 1980 Op. Att'y Gen. No. 80-087.

Transfer of Sick Leave Benefits Accumulated under R.C. 124.38

You ask whether the provisions of R.C. 124.38(C) require a general health district to grant one of its employees the right to use, during his employment with the general health district, sick leave benefits that were accumulated, but unused, while that person was employed by an entity covered by R.C. 124.38. The transfer of sick leave benefits accumulated under R.C. 124.38 is governed by R.C. 124.38(C), which states in pertinent part: "An employee who transfers from one *public agency to another* shall be credited with the unused balance of his accumulated sick leave up to the maximum of the sick leave accumulation permitted in the *public agency* to which the employee transfers." (Emphasis added). The meaning of the term "public agency," as used in R.C. 124.38, was addressed in 1981 Op. Att'y Gen. No. 81-062 and 1954 Op. Att'y Gen. No. 3643, p. 128, both of which concluded that the term was limited to those public agencies named in the statute.

The meaning of "public agency" was again considered in 1985 Op. Att'y Gen. No. 85-075. As noted in that opinion, the General Assembly amended R.C. 124.38 in 1981-1982 Ohio Laws, Part II, 3460 (Am. Sub. H.B. 694, eff., in part, Nov. 15, 1981). Op. No. 85-075 at 2-294 addressed the effect of this amendment, as follows:

In this amendment the legislature, in describing the types of employees entitled to sick leave benefits under R.C. 124.38, removed the language an "employee, whose salary or wage is paid in whole or in part by the state," and added "each employee of any state college or university." At the same time, the legislature enacted R.C. 124.382, providing sick leave benefits for "all employees whose salary or wage is paid directly by warrant of the auditor of state." Thus, upon the enactment of Am. Sub. H.B. 694, each "employee in the various offices of the county, municipal, and civil service township service, each employee of any state college or university, and each employee of any board of education for whom sick leave is not provided by [R.C. 3319.141]" accrued sick leave under

R.C. 124.38; all "employees whose salary or wage is paid directly by warrant of the auditor of state" accrued sick leave under R.C. 124.382.

.... Since the legislature amended R.C. 124.38 in the same Act in which it enacted R.C. 124.382, and used identical language in both statutes concerning the transfer of unused sick leave from one public agency to another, it appears that the term "public agency" has the same meaning in both statutes. I conclude, therefore, that the term "public agency," as used in R.C. 124.382, refers to agencies of the state, the counties, municipalities, civil service townships, and boards of education. (Citation omitted.)

Based upon the legislative history of R.C. 124.38, as discussed in Op. No. 85-075, it is clear that "public agency," as used in R.C. 124.38, refers to those agencies named in R.C. 124.38 or R.C. 124.382, *i.e.*, agencies of the state, counties, municipalities, civil service townships, and boards of education.

Because a general health district is not named in either R.C. 124.38 or R.C. 124.382, its employees do not accrue sick leave benefits under either statute. A general health district is not, therefore, a "public agency" for purposes of R.C. 124.38. Accordingly, R.C. 124.38(C) does not entitle a person to have sick leave benefits previously accrued under R.C. 124.38 placed to his credit upon his transfer to employment with a general health district.

Credit for Previously Accumulated Sick Leave

R.C. 124.38(C) also addresses the crediting of previously accumulated sick leave, as follows: "The previously accumulated sick leave of an employee who has been separated from the *public service* shall be placed to his credit upon his re-employment in the *public service*, provided that such re-employment takes place within ten years of the date on which the employee was last terminated from public service." (Emphasis added.) In order to determine whether a person who has separated from public service with a balance of unused sick leave accumulated under R.C. 124.38 is entitled to receive credit for such unused sick leave upon subsequent employment by a public employer, it is necessary to determine the meaning of the term "public service," as used in that statute.

It is a fundamental rule of statutory construction that "a word repeatedly used in [a] statute will be presumed to bear the same meaning throughout the statute unless there is something to show that another meaning is intended." *Schuhholz v. Walker*, 111 Ohio St. 308, 325, 145 N.E. 537, 542 (1924). Thus, the references in R.C. 124.38(C) to separation from, and reemployment in, the "public service" clearly refer to service with those entities that constitute "public agencies" for purposes of that statute. Included within the meaning of "public service," as that term is used in R.C. 124.38(C), therefore, is service with the state, counties, municipalities, civil service townships, or boards of education.

Because a general health district is not a "public agency," as that term is used in R.C. 124.38(C), employment with a general health district does not constitute "public service" for purposes of R.C. 124.38(C). Therefore, R.C. 124.38(C) does not entitle a person who becomes

employed by a general health district to receive credit for unused sick leave accumulated under that statute during prior employment in the "public service."¹

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that R.C. 124.38(C) does not entitle a person who becomes employed by a general health district to receive credit for unused sick leave accumulated under that statute during prior employment in the "public service."

¹ R.C. 124.39(C) permits political subdivisions that are subject to that section to adopt sick leave payment policies, including, among other things, a "policy permitting an employee to receive payment upon a termination of employment other than retirement." R.C. 124.39(C) also permits county appointing authorities to adopt sick leave payment policies in certain circumstances. Thus, the employee about whom you ask may have been entitled to receive payment for the sick leave accumulated in her previous employment, if such a policy had been adopted under R.C. 124.39(C). *See generally* 1990 Op. Att'y Gen. No. 90-074 (payment for unused sick leave under R.C. 124.39(C) or in accordance with applicable collective bargaining agreement).