

1536

1. MUNICIPALITY—COUNCIL HAS AUTHORITY TO ENACT ORDINANCE GRANTING VACATION ALLOWANCE TO CITY EMPLOYEES—PAID UPON TERMINATION OF SERVICE OR TO BENEFICIARY IN CASE OF DEATH—DIRECTOR OF FINANCE OF CITY—AUTHORITY TO PAY VACATION ALLOWANCE PURSUANT TO ORDINANCE.
2. METROPOLITAN HOUSING AUTHORITY—MAY BY RESOLUTION PROVIDE FOR VACATION ALLOWANCE FOR EMPLOYEES—EMPLOYEES MAY RECEIVE SUCH ALLOWANCE UPON TERMINATION OF SERVICE—ALLOWANCE MAY BE PAID TO BENEFICIARY IN CASE OF DEATH.

## SYLLABUS:

1. The council of a municipality has the authority to enact an ordinance granting vacation allowance to city employees, to be paid upon the termination of their service or to their beneficiaries, in case of death. The director of finance of a city has authority to pay such vacation allowance pursuant to said ordinance.

2. A metropolitan housing authority may by resolution provide for a vacation allowance for its employees and said resolution may provide that an employee may receive such allowance upon the termination of service or that such allowance may be paid to his beneficiary in case of death.

Columbus, Ohio, March 8, 1950

Bureau of Inspection and Supervision of Public Offices

Columbus, Ohio

Gentlemen:

Your request for my opinion is as follows:

“Re: Payment of Vacation Allowance  
After Termination of Service

“We are in receipt of two questions relative to the expenditure of public funds to pay vacation allowances to employes whose actual services have been terminated and who are no longer available for call in case of an emergency.

“The problem before our City of Dayton Examiner is one in which the employe leaves the city service as of a certain date without expectation of returning to work at the end of the vaca-

tion period. Such employe may take other employment or leave the city, and in any event will not be available for further service to the city.

“The problem before our Metropolitan Housing Authority Examiner at Cincinnati differs from the situation at Dayton only as to details, and is similar in its final result, in that the Cincinnati Housing Authority has assumed the power to authorize the expenditure of public funds to pay the vacation allowance due a deceased employe, to his estate.

“It is a well established fact that municipalities and other public authorities may provide vacation time, or leave of absence with pay, for their employes. However, the granting of vacations to employes has generally been considered a rest period authorized for the purpose of relaxation to enable employes to return to their duties better able to perform them during the ensuing months.

“We are familiar with the ruling of one of your predecessors in office, Attorney General’s Opinion No. 7176 of the year 1944, the syllabus of which reads :

‘If a city employe has earned the right to a vacation with pay under the terms of a lawful salary ordinance, but dies before receiving the benefit of such vacation, payment of such vacation allowance may not be made to the employe’s estate or beneficiary subsequent to his death.’

“Enclosed herewith are copies of letters received in regard to the foregoing questions, which we are submitting for your information in connection therewith. Inasmuch as the legality of expenditures made from public funds for vacation pay are deemed to be of state-wide interest, we respectfully request that you give consideration to the following questions and furnish us with your formal Opinion in answer thereto :

1. Does the council of a municipality have authority to enact an ordinance providing vacation pay for employes after the termination of their employment by such municipal corporation?
2. Is it legal for the Director of Finance to pay an employe whose personnel record designates the last day worked, which represents many days prior to the last day through which such employe is to be paid?
3. Can a Metropolitan Housing Authority, created and existing under the Housing Authority Law, Section 1078-29, et seq., General Code, lawfully provide by resolution for the payment of annual leave for vacation to the estate of a deceased employe, where such annual leave was accrued but not taken prior to such employe’s death?”

The first and second questions set out in your letter may be answered together, for the reason that if the city council has the authority to enact an ordinance of the type mentioned, then it is legal for the Director of Finance to pay under the authority of such ordinance.

In your request you cite an opinion of the Attorney General for the year 1944, being Opinion No. 7176, page 575. While I agree with that opinion, it must be pointed out that the then Attorney General was construing a specific ordinance of the city of Toledo, and for that reason the conclusion reached in that opinion cannot be taken as a general rule of law but must be confined to a construction of the specific ordinance in question.

In the 1944 opinion the then Attorney General impliedly recognized that a city has authority to enact ordinances relating to vacation allowance for its employes. There are no statutory provisions relating to vacation pay for city employes. Section 4214, General Code, gives to the city council the authority to fix salaries and compensation of the officers, clerks and employes in each department of the city government. By inference, therefore, said council has the authority to fix vacation allowances. Thus Section 4214 reads as follows:

“Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation, and the amount of bond to be given for each officer, clerk or employe in each department of the government, if any be required. Such bond shall be made by such officer, clerk or employe, with surety subject to the approval of the mayor.”

The city council having such authority to fix the compensation of city employes, I know of no provision of law which would prohibit it from providing vacation pay for employes in any manner it sees fit. The only limitation would be one of reasonableness, and I can see no unreasonable situation in the facts you set out in your letter.

Using the same reasoning as above, the same answer applies to your third question. Section 1078-31, General Code, grants authority to a metropolitan housing authority to fix the compensation of officers and employes. Thus Section 1078-31 reads as follows:

“Said housing authority shall be organized by electing one of its number chairman, and another vice-chairman, and shall have power to employ counsel, a director who shall be ex-officio secretary, and such other officers and employes as may be desired, and shall fix the term of office, qualifications and compensation of each.”

The housing authority having this authority by inference it also has the authority to provide for vacation allowances, and I can see nothing invalid in the allowance you set out.

The ordinance and resolution to which you refer in your letter, do not violate any established principles which govern compensation payment by public bodies to employes for services rendered. It is purely in the nature of compensation and is, in fact, a practice carried on by numerous private corporations.

In summary and conclusion it is my opinion that:

1. The council of a municipality has the authority to enact an ordinance granting vacation allowance to city employes, to be paid upon the termination of their service or to their beneficiaries, in case of death. The director of finance of a city has authority to pay such vacation allowance pursuant to said ordinance.

2. A metropolitan housing authority may by resolution provide for a vacation allowance for its employes and said resolution may provide that an employe may receive such allowance upon the termination of service or that such allowance may be paid to his beneficiary in case of death.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.