

**OPINION NO. 92-079**

**Syllabus:**

1. Pursuant to R.C. 124.38, a person who becomes a county employee is not entitled to be credited with sick leave benefits earned while employed by a regional council of governments, a multicounty-municipal correctional center, or a regional transit authority.
2. R.C. 124.39(B) permits a county employee to include years of service with a regional transit authority, but not with a regional council of governments or a multicounty-municipal correctional

center, for purposes of calculating the employee's years of service necessary to receive payment for accumulated, unused sick leave at the time of retirement.

3. Pursuant to R.C. 325.19 and R.C. 9.44, a county employee is entitled to receive credit for prior service with a regional transit authority, but not for prior service with a regional council of governments or a multicounty-municipal correctional center, in calculating the amount of vacation leave benefits to which such person is entitled.
4. Upon becoming a county employee, a person is not entitled by statute to be credited with unused vacation benefits previously earned while employed by a regional council of governments, a multicounty-municipal correctional center, or a regional transit authority.

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**To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio**  
**By: Lee Fisher, Attorney General, December 30, 1992**

You have requested an opinion "regarding the eligibility of an employee from a criminal justice coordinating council, regional jail, or a regional transit authority to transfer sick leave balance, years of service, and accrued vacation time upon entry of employment with a county department or agency." You state that because of the frequency with which employees from public entities transfer into employment with various county agencies, your county seeks to formulate a personnel policy to correctly handle the situations you describe. Since the policy about which you ask is intended for all county employees, this opinion will be limited to those benefits generally available to county employees and will not address benefits that may be available to employees by action of an individual county appointing authority or benefits that may be provided to certain county employees pursuant to a collective bargaining agreement.

#### **I. Statutory Sick Leave Benefits for County Employees Generally**

Pursuant to R.C. 124.38, employees in county service, with certain exceptions, are entitled "for each completed eighty hours of service to sick leave of four and six-tenths hours with pay." For purposes of R.C. 124.38, a county employee's prior service is irrelevant in the determination of the amount of sick leave the employee receives. Rather, the number of hours of sick leave a county employee receives under the statute is based on the number of hours of service completed in his current employment.

The use and accumulation of sick leave is also governed by R.C. 124.38, as follows:

Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work. 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. 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....

This section does not interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employees for unused sick leave.

Notwithstanding this section or any other section of the Revised Code, any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county commissioners, establish alternative schedules of sick leave for employees of the appointing authority for whom the state employment relations board has not established an appropriate bargaining unit pursuant to [R.C. 4117.06], provided that the alternative schedules are not inconsistent with the provisions of a collective bargaining agreement covering other employees of that appointing authority.

Thus, in certain instances, R.C. 124.38 entitles newly hired county employees to be credited with unused sick leave benefits previously accumulated during prior public service.

## **II. Credit for Prior Service Under R.C. 124.38**

### **A. Transfer From A Public Agency**

One instance in which a newly hired county employee is entitled to receive credit for previously accumulated sick leave under R.C. 124.38 is where the employee has transferred from "a public agency" to county employment. The term "public agency," as used in R.C. 124.38, is not defined by statute, but has been consistently interpreted as including only those public agencies whose employees accumulate sick leave benefits under that statute.<sup>1</sup> The rationale for reading the term "public agency" in such a limited manner is set forth in 1960 Op. Att'y Gen. No. 1302, p. 298, 300, as follows:

Otherwise a public agency that was not bound to accumulate sick leave time in the manner provided by [R.C. 143.29 (now R.C. 124.38)] could allow an employee to accumulate sick leave at more than the rate provided for by that statute. Another public agency would then be bound to accept that accumulated leave time when an employee transfers to it from such an agency. In my opinion this would result in inequities not intended by the legislature.

*See also* 1971 Op. Att'y Gen. No. 71-055 and 1954 Op. Att'y Gen. No. 3643, p. 128.

Since the issuance of these opinions, numerous amendments to R.C. 124.38 have been passed by the General Assembly. In none of those amendments has the General Assembly seen fit to change the language of the statute to reflect a meaning of the term "public agency" which differs from the narrow interpretation of that term in 1960 Op. No. 1302. The long-standing reading of this term must, therefore, be presumed to remain in effect. *See State v. Glass*, 27 Ohio App. 2d 214, 273 N.E.2d 893 (Brown County 1971).

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<sup>1</sup> In 1981-1982 Ohio Laws, Part II, 3460, 3542 (Am. Sub. H.B. 694, eff. in part Nov. 15, 1981), R.C. 124.38 deleted from its coverage employees "whose salary or wage is paid in whole or in part by the state," except employees of state colleges or universities. Am. Sub. H.B. 694 also enacted R.C. 124.382 to provide sick leave benefits for "all employees whose salary or wage is paid directly by warrant of the auditor of state." Whether the term "public agency," as used in R.C. 124.38, after November 15, 1981, includes entities of the state is a question that need not be resolved in this opinion since none of the entities about which you ask even arguably qualify as state entities.

### **B. Re-employment in the Public Service**

R.C. 124.38 also entitles an employee "who has been separated from the public service" to be credited with previously accumulated sick leave upon "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." As with the term "public agency," discussed above, R.C. 124.38 does not define the term "public service," as used in that section. Reading the various provisions of R.C. 124.38 as parts of a whole, however, it reasonably follows that the term "public service" refers to service with a "public agency," as that term is used in the statute. Thus, in order to be entitled to credit upon re-employment for previously accumulated sick leave, a county employee must have accumulated that leave in the service of a "public agency," within the prescribed time period.

The employees who are entitled to receive sick leave benefits under R.C. 124.38 are, with certain exceptions, those in the service of any county, municipality, civil service township, employees of any state college or university, and employees of any board of education for whom sick leave is not provided by [R.C. 3319.141]. Thus, in order for a person to receive credit under R.C. 124.38 for previously accumulated sick leave, either upon transfer to county employment or re-employment with the county, that leave must have accrued while the employee was in the service of a county, municipality, or civil service township, or while employed by a state college or university or by a board of education that did not provide sick leave to the employee under [R.C. 3319.141].

### **III. Regional Councils of Governments, Multicounty-Municipal Correctional Centers, and Regional Transit Authorities Are Not "Public Agencies" for Purposes of R.C. 124.38**

Your specific question concerns a county employee's prior service with a criminal justice coordinating council, a regional jail or a regional transit authority.

#### **A. Criminal Justice Coordinating Council**

Information provided with your request discloses that the criminal justice coordinating council was created by the county and a city under R.C. Chapter 167 as a regional council of governments. It is well established, however, that a regional council of governments is an entity separate from the member subdivisions creating it. *See* 1986 Op. Att'y Gen. No. 86-068. Thus, a regional council of governments created by a county and a municipality is neither a county body nor a municipal body. Since a regional council of governments also is not one of the other public agencies mentioned in R.C. 124.38, the criminal justice coordinating council is not a public agency for purposes of R.C. 124.38. Consequently, a county employee who accumulated sick leave while previously employed by the criminal justice coordinating council is not entitled under R.C. 124.38 to receive credit for such sick leave upon becoming employed or re-employed in the county service.

#### **B. Regional Jail Facility**

Information provided by your office states that the regional jail facility about which you ask was established as a multicounty-municipal correctional center by several counties and a city pursuant to R.C. 307.93. R.C. 307.93(A) provides for the establishment of a correctional center by contract among various combinations of counties and municipalities to augment existing jail facilities. The contract creating the correctional center "shall prescribe the manner of funding of, and debt assumption for, the center and the standards and procedures to be followed in the operation of the center," and may provide for "the acquisition, construction, maintenance, repair, termination of operations, and administration of the center." *Id.* The fact that a number of political subdivisions create a correctional center

pursuant to contract indicates that such a center is not a creature of any single subdivision creating it. A correctional center created in accordance with R.C. 307.93(A) does not, therefore, qualify as a public agency under R.C. 124.38. Accordingly, R.C. 124.38 does not entitle an employee, upon employment or re-employment in the county service, to receive credit for sick leave previously accumulated while in the employ of a correctional center established under R.C. 307.93(A).

### C. Regional Transit Authority

R.C. 306.32 provides for the creation of a regional transit authority by any combination of counties, municipalities and townships. Pursuant to R.C. 306.31, a regional transit authority is "a political subdivision of the state and a body corporate with all the powers of a corporation." As concluded in *Spitaleri v. Metro Regional Transit Authority*, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980), employees of a regional transit authority are not public employees for purposes of R.C. Chapter 124 and are not entitled to sick leave benefits under R.C. 124.38. Accordingly, a regional transit authority also is not a "public agency" for purposes of R.C. 124.38. Thus, R.C. 124.38 does not entitle a person, upon employment or re-employment in the county service, to receive credit for sick leave benefits previously accumulated while in the employ of a regional transit authority.

### IV. Other Effects on Sick Leave Benefits

You also ask whether prior service with the criminal justice coordinating council, the multicounty-municipal correctional center, or a regional transit authority affects a county employee's sick leave benefits in any other manner.

R.C. 124.39(B) establishes a procedure for county employees, among others, to receive payment for unused sick leave "at the time of retirement from active service with the political subdivision, and with ten or more years of service *with the state, any political subdivisions, or any combination thereof*" (emphasis added). Pursuant to R.C. 124.39(C), a county may adopt a policy varying R.C. 124.39(B) in several ways, including the reduction of the number of years of service required before payment for unused sick leave can be made. R.C. 124.39(C) does not, however, authorize a county to vary the types of prior service for which credit may be given to county employees. Thus, whether a county employee is entitled to receive credit for prior service with any of the entities about which you ask may affect the time the employee becomes eligible to receive payment for any unused sick leave benefits under R.C. 124.39(B) or (C).

The types of service which a county employee may include for purposes of R.C. 124.39(C) are "service with the state, *any political subdivisions, or any combination thereof*" (emphasis added). Of the three entities about which you ask, only the regional transit authority is established as a political subdivision of the state, R.C. 306.32. Further, as is apparent from the foregoing discussion of the formation of regional councils of government and multicounty-municipal correctional centers, service with neither entity qualifies as service with the state. For purposes of R.C. 124.39, therefore, a county employee is entitled to prior service credit for time served with a regional transit authority, but not for time spent in the employ of a regional council of governments or a multicounty-municipal correctional center.

### V. Statutory Vacation Leave for County Employees

The vacation leave benefits to which county employees are entitled by statute are set forth in R.C. 325.19. Pursuant to R.C. 325.19, the amount of vacation leave to which a county employee is entitled varies, depending upon the

number of years of service "with the county or any political subdivision of the state" to the employee's credit.

In order to determine the types of service that may be included for purposes of R.C. 325.19, it is also necessary to examine R.C. 9.44 which states in pertinent part:

(A) Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have his prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of his vacation leave....

(B) To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:

1) A county, the person shall have only his prior service with a county counted....

The prior service which a county employee may include for purposes of R.C. 325.19 was explained in 1988 Op. Att'y Gen. No. 88-089 (syllabus, paragraph three), as follows:

Except for a person initially employed by a county on or after July 5, 1987, a county employee is entitled to receive service credit pursuant to R.C. 325.19 for prior service with a county or any political subdivision of the state, and, pursuant to R.C. 9.44(A), for prior service with the state or any political subdivision, for purposes of calculating the amount of his vacation benefits under R.C. 325.19; a person who is initially employed by a county on or after July 5, 1987, however, is limited by R.C. 9.44(B)(2) to receiving such service credit only for prior service with a county.

Of the three entities about which you ask, only a regional transit authority is a political subdivision, *see* R.C. 306.31, and employment with none of the entities may be considered employment in the service of the state or a county. Thus, pursuant to R.C. 325.19 and R.C. 9.44, a county employee is entitled to receive credit for prior service with a regional transit authority, as a political subdivision, but not for service with a regional council of governments or a multicounty-municipal correctional center, in calculating the amount of vacation leave benefits to which such person is entitled.

#### **VI. Newly Hired County Employee Is Not Entitled by Statute to Receive Credit for Previously Earned Vacation Benefits**

The final part of your question asks whether a person who has accumulated, unused vacation leave that was earned during employment with a regional council of governments, a multicounty-municipal correctional center, or a regional transit authority may be credited with such leave upon entering county employment. Neither R.C. 325.19, R.C. 9.44, nor any other provision of the Revised Code provides for a person to receive credit for previously earned vacation benefits upon becoming a county employee.

#### **VII. Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised:

1. Pursuant to R.C. 124.38, a person who becomes a county employee is not entitled to be credited with sick leave benefits

earned while employed by a regional council of governments, a multicounty-municipal correctional center, or a regional transit authority.

2. R.C. 124.39(B) permits a county employee to include years of service with a regional transit authority, but not with a regional council of governments or a multicounty-municipal correctional center, for purposes of calculating the employee's years of service necessary to receive payment for accumulated, unused sick leave at the time of retirement.
3. Pursuant to R.C. 325.19 and R.C. 9.44, a county employee is entitled to receive credit for prior service with a regional transit authority, but not for prior service with a regional council of governments or a multicounty-municipal correctional center, in calculating the amount of vacation leave benefits to which such person is entitled.
4. Upon becoming a county employee, a person is not entitled by statute to be credited with unused vacation leave benefits previously earned while employed by a regional council of governments, a multicounty-municipal correctional center, or a regional transit authority.