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VACATION—PRIOR SERVICE—COUNTY EMPLOYEE—MAY NOT BE INCLUDED IN DETERMINATION, RIGHT OF STATE EMPLOYEE TO THREE WEEKS PAID VACATION LEAVE—AFTER “FIFTEEN OR MORE YEARS OF SERVICE WITH THE STATE”—SECTION 121.161 RC.

## SYLLABUS:

Prior service as a county employee may not be included in the determination of the right of a state employee to the three weeks of paid vacation leave under the provision in Section 121.161, Revised Code, for such leave after “fifteen or more years of service with the state.”

Columbus, Ohio, May 15, 1956

Hon. James A. Rhodes, Auditor of State  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A question has arisen concerning vacation leave for state employees and an opinion is requested.

“A full time state employee who has served nine years in one state department and is now completing two years service in another state department has also had prior service for a period of six years as an assistant clerk of a county elections board. He has also had four years service as a county employee in one of the county offices.

“As a state employee he has eleven years service. As a member of a county board of elections he has six years service and as a county employee he has had four years service, totaling twenty-one years of service. He is, presently requesting annual vacation leave of three calendar weeks.

“Is such an employee by virtue of the vacation leave statute, for full-time state employees (R. C. 121.161) entitled to three calendar weeks vacation or limited to two calendar weeks of vacation leave?

“R. C. 325.19 provides for vacation leave for *county employees*. In your opinion, 1955 O.A.G. 5052 you ruled that for a county employee to be entitled to three weeks vacation his years of service to the county government had to be 15 or more and that time spent in other branches of the governmental service *was not to be computed* or added into the time spent with the county to make up this 15 year period.

“Specifically, the question desired answered is:

“Is an assistant clerk of a county board of elections or an employee of a county to receive credit *as a state* employee so that he becomes amenable to the provisions of R. C. 121.161 providing for vacation leaves?”

Prior to October 11, 1955, the statutory provision relative to paid vacation leave of state employees was set out in Section 121.16, Revised Code, as follows:

“Each state employee *after service of one year* is entitled during each year thereafter, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees having *fifteen or more years of service* are entitled to three calendar weeks of such leave.” (Emphasis added.)

In my Opinion No. 5052, Opinions of the Attorney General for 1955, dated April 13, 1955, I compared this provision with an analagous provision in Section 325.19, Revised Code, relative to county employees, and thereafter remarked:

“It will be observed that the original provision giving a two weeks vacation to state employees, was enacted in 1921, long prior

to the statute relative to county employees. The provision as to county employees was enacted in 1947, and provided for a maximum of two weeks. Both of these laws were amended, but by separate acts in 1953, granting an extra week for fifteen years service. Neither statute governing the state or county makes any reference to the other and neither contains any provision as to any right to transfer vacation leave gained in one service to the other service. 'Years of service,' as used in each of these statutes, could have no other reasonable meaning than service in the public body with which the statute is dealing."

Since October 11, 1955, the comparable statutory provision here involved has been set out in Section 121.161, Revised Code, as follows:

"Each full-time state employee, including full-time hourly-rate employees, after service of one year with the state, is entitled, during each year thereafter, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees having fifteen or more years of *service with the state* are entitled to three calendar weeks of such leave." (Emphasis added.)

The change of the expression "fifteen or more years of service" in the prior statute to "fifteen or more years of service with the state" makes it even plainer than before that no service other than state service can be considered in determining in particular cases whether an employee may claim as of right three weeks paid vacation leave. In a total absence of ambiguity there is no occasion to resort to interpretation otherwise than in accord with plain meaning of a statute. *Slinghuff v. Weaver*, 66 Ohio St., 621.

In specific answer to your inquiry, therefore, it is my opinion that prior service as a county employee may not be included in the determination of the right of a state employee to the three weeks of paid vacation leave under the provision in Section 121.161, Revised Code, for such leave after "fifteen or more years of service with the state."

Respectfully,

C. WILLIAM O'NEILL

Attorney General