

OPINION NO. 71-055

Syllabus:

State Library Board employees who have accumulated sick leave as public library board employees, may not be credited with sick leave balances so accumulated when employed by the State Library Board.

To: Joseph F. Shubert, State Librarian, Columbus, Ohio
By: William J. Brown, Attorney General, September 21, 1971

I have your request for my opinion on the following question:

"May State Library Board employees who have accumulated sick leave as public library board employees be credited with such sick leave balances by the State Library Board upon employment by the State Library Board?"

The answer to this question involves an interpretation of Section 143.29, Revised Code, which reads, in pertinent part, as follows:

"Each employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county service and municipal service, and each employee of any board of education * * * shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. * * * The previously accumulated sick leave of an employee who has been separated from the public service may be placed to his credit upon his reemployment in the pub-

lic service, provided that such reemployment 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. * * *

(Emphasis added)

It has been established that employees of public library boards do not accrue such leave under the provisions of the quoted Section. Opinion No. 2077, Opinions of the Attorney General for 1950; Opinion No. 2038, Opinions of the Attorney General for 1961. The rationale of those Opinions is that such employees do not fall within the eligible classifications set forth in the statute, and that such employees are entitled to sick leave only if so provided in the rules and regulations adopted pursuant to what is now Section 3375.40 (G) and (H), Revised Code.

It may be argued, however, that when an employee transfers his employment from an agency supported by public funds to another such agency, the sick leave he had accumulated in the former should reasonably be transferred to the latter for his benefit. The use of the phrase "public agency" in the sentence dealing with that situation might be so construed, since it appears nowhere else in the Section.

On the other hand, two of my predecessors have held that transfers of accumulated sick leave can be effected only within the classes of employment in which the sick leave is accrued, under Section 143.29, *supra*. Opinion No. 1302, Opinions of the Attorney General for 1960; Opinion No. 3643, Opinions of the Attorney General for 1954. In other words, it was their view that the term "public agency", as used therein, was to be restrictively construed to include only certain types of public agency, i.e., those types defined in the first three clauses of the Section. Detailed analyses of the statutory language supports the view of my predecessors.

The phrase "public agency" was inserted in connection with the amendment that broadened the general coverage of the Section, from state employees only, to include county, municipal and school board employees (123 Ohio Laws, 657) and may have been intended as a categorical term for all of the classes for which sick leave accumulation was then provided.

The phrase "public agency" would also seem to be related to the phrase "public service" which appears in the preceding sentence of the Section and in which provision is made for reinstatement of accumulated leave upon re-employment following a separation of the employee. Since that sentence speaks of accumulation and immediately follows the language that limits the total sick

leave that may be accumulated, it would appear that all such language was intended to cover the terms and conditions of sick leave accumulation for those classes of public employees described in the Section and for no others. In that reading it would follow that "public agency" was similar in meaning to "public service" and that both were intended restrictively.

Thus, considering the precedents, the statutory history and the language of the Section, I must conclude that accumulated sick leave may not be transferred, except between the types of public agency specifically recited in Section 143.29, supra.

In specific answer to your question, it is my opinion, and you are so advised, that State Library Board employees who have accumulated sick leave as public library board employees, may not be credited with sick leave balances so accumulated when employed by the State Library Board.