606

HOLIDAY PAY; COUNTY EMPLOYEES ENTITLED TO EVEN WHEN ON SATURDAY — APPLIES TO PER DIEM AND HOURLY WORKERS—§325.19 R.C.

SYLLABUS:

Under the provisions of Section 325.19, Revised Code, all per diem and hourly employees of a county are entitled to receive on Memorial Day and Independence Day in 1959, which days fall on Saturday, eight hours of holiday pay for each of such days.

Columbus, Ohio, June 15, 1959

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"In the several offices and departments of the county service in Cuyahoga County there are county employees working on a per diem and hourly basis for a forty hour week and they are not regularly scheduled to work on Saturday and Sunday. This year Memorial Day and Independence Day will be celebrated on Saturday which is not a working day for these employees.

"The question arises whether these per diem and hourly employees are entitled this year to Memorial Day and Independence Day as paid holidays under the provisions of Section 325.19 of the Revised Code of Ohio.

"Your formal opinion is respectfully requested at the earliest convenience."

Section 325.19, Revised Code, reads as follows:

"Each employee in the several offices and departments of the county service, after service of one year, shall be entitled during each year thereafter, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees having fifteen or more years of *county* service are entitled to three calendar weeks of such leave. In special cases as determined by the head of the department or office affected, the annual leave during any one calendar year may be extended to include unused vacation leave of previous years provided the total leave taken in any one year shall not exceed six weeks.

"In the case of a county employee working on a per diem basis, one day vacation leave shall be granted for each twenty-four days worked by such employee. In the case of an employee working on an hourly basis, one day vacation leave shall be granted for each one hundred seventy three and one third hours worked by such employees. *In addition to such vacation leave, such county employee, working on a per diem or hourly basis, shall be entitled to eight hours of holiday pay for New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, of each year, if he is a regular employee with at least six months full time county service prior to the month when such holiday occurs.*

"The total vacation leave of such per diem or hourly employee shall not exceed the total vacation leave provided by this section for other county employees." (Emphasis added)

The words emphasized were added to the statute by an amendment which became effective September 19, 1955, (126 Ohio Laws 416).

It will be observed that the language by which per dim and hourly employees are granted *vacation leave* underwent no change by the amendment. The provision for "holiday leave" appears to be entirely independent of the "vacation leave." Not the language of the statute: *"In addition to such vacation leave."* Clearly these words indicate an intention to grant to per diem and hourly employees some new benefit over and above and wholly unconnected with the *vacation leave* granted by the old law and retained *verbatim,* in the new.

The fact that Memorial Day and Independence Day fall this year on Saturday does not appear to me to be significant. Under the language used relative to "holiday pay", it appears to me that the effect would be the same if these holidays fell on any other day of the week.

Taking the legislature at its word, as we must, it appears that it has granted all of these particular employees a bonus for New Years Day and for each of the other named holidays.

It might be argued that such an indiscriminant grant would be unfair or even foolish. But not even a court has any right to interpret the plain language of a law in accordance with what it thinks would be right, or what it thinks the legislature *probably* intended.

The case of *Slingluff v. Weaver,* 66 Ohio St., 621, (1902), is emphatic and decisive in supporting the conclusion which I have above indicated. There the General Assembly had passed an act which would have the effect of stripping the Supreme Court of a large part of its time honored appellate jurisdiction.

It was strenuously urged that the General Assembly did not intend such result, that it would be against public policy, and that *"neither the author of the bill* nor the judiciary Committee under whose inspection it presumably passed, *nor the members of either house,* had any purpose of curtailing the jurisdiction of this court, or indeed any suspicion until after their adjournment that that result had been brought about."

Answering these arguments, the court said:

> "* * * But it is equally the law, we suppose, that *the court does not possess, and should not attempt to exercise, the power of introducing doubt or ambiguity not apparent in the language, and then resort to verbal modifications to remove such doubt and conform the act to the court's supposition with respect to the intent of the legislature,* for it seems well settled, as expressed by Story, J., in *Gardner* v. *Collins,* 2 Pet., 56; 'What the legislative intent was can be derived only from the words they have used; *we cannot speculate beyond the reasonable import of these words.* The spirit of the act must be extracted from the words of the act, and nor from conjectures *aliunde.* * * *" (Emphasis added)

The decision of the court, holding that by reason of the act in question, it had lost its jurisdiction, was expressed in the syllabus as follows:

> "1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-

making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.

"2. But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.

"3. The language of the act of May 12, 1902, entitled, "An act to amend Section 6710 (as amended 93 O. L., 255) of the Revised Statutes,' is plain and free from doubt, and effect must be given to its clear import without regard to the consequences which may result. Its effect is to deprive this court of jurisdiction to review any case in error where the judgment of the lower court has been or may be rendered since the passage of the act, and not coming within its terms."

This case has been cited by our courts, with approval in a great many subsequent decisions. Among the most recent, I note *State* v. *Stevens*, 161 Ohio St., 432, in which the first paragraph of the syllabus reads:

"1. In the construction of a legislative enactment, the question is not what did the General Assembly intend to enact but what is the meaning of that which it did enact. (Paragraph two of the syllabus in the case of *Slingluff* v. *Weaver*, 66 Ohio St., 621, approved and followed.)"

Again in the case of *In re Torok*, 161 Ohio St., 585, the court used this language:

"* * * As this court has repeated in numerous cases involving statutory construction, the question is not what did the General Assembly intend to enact but what is the meaning of that which it did enact. *Slingluff* v. *Weaver*, 66 Ohio St., 621, N.E. 574."

The amendment in 126 Ohio Laws, 416 to Section 325.19, Revised Code, clearly indicates an intention of the General Assembly to grant a special bonus to county employees who are employed by the day or hour,

and I find no ambiguity in the language used which would permit construction and thereby give it any but its literal meaning.

Accordingly, in answer to your question, it is my opinion and you are advised that under the provision of Section 325.19, Revised Code, all per diem and hourly employees of a county are entitled to receive on Memorial Day and Independence Day in 1959, which days fall on Saturday, eight hours of holiday pay for each of such days.

Respectfully,
MARK MCELROY
Attorney General