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1. VACATION—UNDER SECTION 2394-4a G. C. IT IS POSSIBLE BUT IMPROBABLE, PUBLIC EMPLOYEE WORKING ON PER DIEM OR HOURLY BASIS COULD LEGALLY RECEIVE FOURTEEN DAYS PAY WHILE ON VACATION.
2. ADDITIONAL HOURS MAY NOT BE CARRIED OVER INTO FOLLOWING YEAR TO COUNT AS CREDITS FOR VACATION.

SYLLABUS:

1. Under Section 2394-4a, General Code, it is possible although improbable that a public employe working on a per diem or hourly basis could legally receive fourteen days pay while on vacation.
2. Under Section 2394-4a, General Code, additional hours may not be carried over into the following year, to count as credit for vacations.

Columbus, Ohio, May 20, 1949

Hon. G. L. Schilling, Prosecuting Attorney
Clinton County, Wilmington, Ohio

Dear Sir:

Your request for my opinion is as follows:

“This office seeks an interpretation of Section 2394-4a which was effective September 8, 1947.

“First, does that portion of the above section which provides that each employe in several offices and departments of the county service shall be entitled during each calendar year, beginning January 1st to two calendar weeks, excluding legal holidays, refer to 14 days with pay or 12 days with pay? My office has taken the position that two weeks with pay would be that the employes would receive actually pay for 12 days and not 14 days.

“Second, the other portion of said statute which has to do with those on an hourly basis who are entitled to one day vacation for each 192 hours work. We have hourly men with sufficient hours that would give them more than two calendar weeks vacation. They desire to carry over the additional hours to another year. Our office interpreted said statute to mean just as it read, that in any one year they would be entitled to one day for each

192 hours worked, but if they had more hours they could not take a greater leave than two calendar weeks.”

Section 2394-4a, General Code, to which you refer in your request, reads as follows :

“Each employee in the several offices and departments of the county service shall be entitled during each calendar year beginning January first, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees who have less than one year of service, shall be entitled to one working day vacation leave with full pay for each month of service during said calendar year.

“In the case of a county employee working on a per diem basis, one day vacation shall be granted for each twenty-four days worked by such employee; and in the case of an employee working on an hourly basis, one day vacation leave shall be granted for each one hundred and ninety-two hours worked by such employee; provided, however, that the total vacation leave of such per diem or hourly employee shall not exceed the total vacation leave provided herein for other county employees.”

Assuming that the employes mentioned in your first question are paid yearly salaries, they are entitled to two weeks vacation, excluding legal holidays, and are to be paid their salaries as if they had worked during that time. The same vacation is permitted a monthly salaried employe and he is to be paid his monthly salary even though he does not work two weeks out of the particular month in which he takes his vacation.

In the case of an employe who is paid on a weekly basis, he is entitled to his weekly salary during the two weeks he is on vacation.

In the case of an employe working on a per diem basis, he is entitled to one day vacation with pay for each twenty-four days worked. This may or may not amount to fourteen days with pay. The statute merely says that the total vacation *leave* of such employe shall not exceed the total vacation *leave* granted other county employes. Thus, if a particular per diem employe worked 336 days, he would be entitled to fourteen days paid vacation or pay for two calendar weeks which would not exceed the total vacation *leave* granted other employes. This, of course, is a mere possibility since it is improbable that such an employe would work every Saturday afternoon, every Sunday and every legal holiday during the year. However, it is possible and for that reason I set it out.

The same is true for an hourly employe. He is entitled to one day vacation for each 192 hours worked. Thus, if he works 2,688 hours, he is entitled to fourteen paid days. His vacation *leave* would not be in excess of two calendar weeks. In his case as in the case of the per diem employe the fewer hours or days worked, the less vacation, but in neither case can the vacation *leave* exceed two calendar weeks or fourteen days.

The employes in your second question may not carry over the additional hours to another year. As you state in your letter, the statute refers to one year. The two paragraphs are to be read together, and the statement "during each calendar year beginning January first," must be read into the second paragraph.

It is therefore my opinion that under Section 2394-4a, General Code, it is possible that a public employe could legally receive fourteen days pay while on vacation and that under the same section additional hours may not be carried over into following years to count as credits for vacation.

Respectfully,

HERBERT S. DUFFY,
Attorney General.