

2845

COUNTY EMPLOYEES — VACATION LEAVE — §325.19 R.C. —
COMPUTATION ; 15 YEARS SERVICE—REGULAR, PER DIEM,
HOURLY EMPLOYEES.

SYLLABUS:

Under the provisions of Section 325.19, Revised Code, paid vacation leave of three weeks annually is authorized in the case of full-time county employees having fifteen years of county service, but special provision is made in this section for paid vacations and holidays for employees working on a *per diem* or hourly basis. Such special provision does not include additional paid leave after fifteen years of service.

Columbus, Ohio, October 7, 1958

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion presents the following questions:

1. Under the provisions of Section 325.19, Revised Code, may an hourly employee with fifteen years of service, and who has actually "earned" only ten days vacation, 2 calendar weeks, be automatically entitled to an extra week's vacation because of his fifteen years' service?

2. Assuming the same individual had only "earned" an eight-day vacation would he nevertheless be entitled to an extra week's vacation?

The first paragraph of Section 325.19, Revised Code, reads:

"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."

Although the above quoted paragraph uses the word "employee" without restriction, it is evident that such term was not intended to be all-

inclusive but rather was intended to be exclusive of *per diem* and hourly employees. Paragraph two of the above section reads:

“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 employee. 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.” (Emphasis added)

It is abundantly clear that this paragraph sets forth the method to be used in determining the vacation leave earned by *per diem* and hourly employees. For the purposes of this determination, paragraphs one and two are distinct and separate and nothing set forth in the one is intended to carry over or apply to the other. The third paragraph of this section makes it quite plain that these two classes of employees are separate and apart and that separate provision for paid vacation leave is made for each. It reads:

“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)

It is pointless to suggest that the legislature intended no such discrimination between employees for it plainly shows its recognition of these two categories of employees and of its very intention so to discriminate between them.

Accordingly, it is my opinion and you are advised that:

Under the provisions of Section 325.19, Revised Code, paid vacation leave of three weeks annually is authorized in the case of full-time county employees having fifteen years of county service, but special provision is made in this section for paid vacations and holidays for employees working on a per diem or hourly basis. Such special provision does not include additional paid leave after fifteen years of service.

Respectfully,
WILLIAM SAXBE
Attorney General