

OPINION NO. 80-037**Syllabus:**

For the purposes of accruing sick leave benefits pursuant to R.C. 124.38, the personnel department of a state university may place all of its full-time, contract employees holding faculty, administrative or research positions on active pay status of forty hours per week throughout the period included within their contract of employment irrespective of the number of hours required of, or actually spent by, such employees in discharging their contractual duties.

To: Robert E. Mahn, Secretary, Board of Trustees, Ohio University, Athens, Ohio
By: William J. Brown, Attorney General, June 24, 1980

I have before me your request for an opinion in which you ask whether Ohio University has acted properly in adopting its own sick leave program for faculty and administrative personnel and, if so, whether the current policy comports with law.

The relevant portion of the program in question, which deals with the accrual of sick leave benefits, provides that commencing on July 1, 1976, benefits will accrue at the rate of 1.25 days per calendar month or fifteen days per year for all full-time contract employees. For purposes of this program, a full-time contract employee is defined as holding a regular nine, ten, eleven, or twelve month contract. No attempt has been made to determine the number of hours worked by such full-time employees.

You indicate that the present controversy has arisen because of a conflict of opinion with the Auditor's Office. As represented in your letter, it is the Auditor's position that the proper method of calculating the accrual of sick leave benefits for such employees requires an account of the hours worked. It is, in short, the position of the Auditor that records should be maintained of hours actually worked and that sick leave should be calculated accordingly.

R.C. 124.38, which provides sick leave benefits for state employees, provides in 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, municipal, and civil service township service, and each employee of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. . . .

The foregoing provision applies without distinction to members of both the classified and unclassified service. Moreover, the provision has been applied consistently to all employees of state universities. See, e.g., 1977 Op. Att'y Gen. No. 77-032 (R.C. 124.38 is applicable to the members of the faculty of a state university); 1974 Op. Att'y Gen. No. 74-022 (the unclassified employees described in R.C. 124.38, including the instructors and teachers of a state university, are entitled to paid sick leave pursuant to R.C. 124.38).

That the General Assembly fully intended all employees of a state university to accrue sick leave benefits is manifest in the terms of R.C. 124.39, which provides in part as follows:

As used in this section, "retirement" means disability or service retirement under any state or municipal retirement system in the state.

(A) A state employee paid directly by warrant of the state auditor or an employee of a state college or university may elect, at the time of retirement from active service with an agency of state government and with ten or more years of service with the state or any of its political subdivisions, to be paid in cash for one-fourth of the value of his accrued but unused sick leave credit. Such payment shall be based on the employee's rate of pay at the time of retirement. (Emphasis added.)

This provision, as well, has been held to apply to all employees, including faculty, of a state university. See Op. No. 77-032, *supra*.

I must conclude, therefore, that all university employees, including those holding teaching positions, accrue sick leave benefits in the manner provided in R.C. 124.38.

Although the statutorily mandated method of accrual is appropriate for public employees who maintain regular working hours, its adaptability to persons holding positions on the faculty of a state university is not immediately apparent. As I have had occasion to recognize in the past, the nature of a university professorship demands irregular hours. 1973 Op. Att'y Gen. No. 73-020. I indicated in that opinion that a "full-time" university professor is designated by the number of classroom hours taught in a given term, not by the total number of hours he is expected to work during that part of the week considered by other persons as normal working hours.

I have been advised, however, that "full-time" status is, in fact, more than a function of hours spent in a classroom. Additional activities, such as research, class preparation, committee meetings and administrative duties are generally considered in determining whether such an employee qualifies for full-time status. The complexity of this situation is exacerbated by the realization that some duties do in fact, if not in theory, demand more time than others. A committee chairman, for example, may spend more time in preparing for a meeting than a member of a committee. These qualitative differences are, I understand, considered in determining whether a position is a full-time one.

The situation presented is thus one in which certain positions within the university cannot be quantified in terms of hours that should be or are in fact spent in discharging the duties attendant thereto. The problem is that the statutorily mandated method for the accrual of sick leave benefits would seem to require either an actual or theoretical hourly quantification of the duties attending each such position.

Upon closer scrutiny, however, the problem presented by your inquiry becomes more apparent than real. Under an earlier version of R.C. 124.38, the accrual of sick leave benefits for university employees was a relatively simple matter. Prior to amendment by Am. H.B. No. 93, effective May 17, 1967, R.C. 143.29, which later became R.C. 124.38, provided sick leave for the employees enumerated therein on the basis of one and one-fourth work days for each completed month of service. Pursuant to this provision, full-time university employees accumulated sick leave benefits uniformly irrespective of the number of hours they were scheduled to, or did in fact, work.

The 1967 amendment, which made hours rather than months of service the crucial determinant in the accrual of sick leave benefits, was designed, however, to effect only a limited change. In discussing the scope of the intended change, I stated in 1977 Op. Att'y Gen. No. 77-029 as follows:

As discussed in the analysis of Am. Sub. H.B. No. 93 prepared by the Legislative Services Commission, the amendment proposed therein altered the basis upon which sick leave would be computed, so that leave would accrue on the basis of each eighty hours of service rather than on the basis of monthly employment. However, no intent

to alter the sick leave available to full-time employees was evident. In fact, as noted in the Legislative Service Commission analysis of Am. Sub. H.B. No. 93, "A full-time employee currently may earn 15 days sick leave under present law and this feature is not changed."

It appears, therefore, that in using the term "hours of service" in R.C. 143.29, now R.C. 124.38, the General Assembly intended that sick leave accrue on the basis of hours in active pay status. There is nothing in the history of Am. Sub. H.B. No. 93 which suggests an intention that the sick leave available to full-time employees was to change.

It is thus the number of hours on active pay status rather than the number of hours actually worked that is determinative of the amount of sick leave accrued.

The term "active pay status" is specifically defined neither by statute nor case law. The meaning of the term is, nonetheless, fairly apparent. "Hours on active pay status" refers to the hours each week for which an employee normally receives compensation for services rendered. See generally 1976 Op. Att'y Gen. No. 76-030. Thus, the yearly salary for most state employees is the product of their hourly rate of pay, multiplied by their hours per week on active pay status, multiplied by fifty-two. Although the number of hours that each employee is on active pay status is a decision presumably vested in the discretion of the appointing authority, see generally R.C. 124.18, most full-time state employees are on active pay status of forty hours per week. Indeed, full-time status for most state employees is defined by R.C. 124.18, which provides in part that "forty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state." The great majority of full-time state employees thus accrue sick leave benefits at the rate of four and six-tenths hours every two weeks.

The pertinent inquiry then, is whether, for purposes of establishing a sick leave policy, a state university may place certain of its employees, who hold full-time, unclassified positions, on active pay status of forty hours per week irrespective of whether such an employee is expected to, or does in fact, maintain such hours. Parenthetically, it might be added that the significance of such an administrative decision does not extend beyond the accrual of sick leave benefits. The number of hours per week on active pay status has no effect upon the compensation of employees whose salary is provided for by contract rather than a statutorily designated hourly rate of pay.

The boards of trustees of the various state universities are vested with extremely broad powers. R.C. 3345.021, which is one of several statutes conferring powers upon boards of trustees, provides in part as follows: "The board of trustees of any college or university, which receives any state funds in support thereof, shall have full power and authority on all matters relative to the administration of such college or university." As I noted in 1979 Op. Att'y Gen. No. 79-032, the authority of a university board of trustees is so sweeping that it has been held that it is possessed of all powers incidental to the administration of the university unless specifically limited by statute. See, e.g., Long v. Board of Trustees, 24 Ohio App. 261 (Franklin County 1926).

An examination of pertinent statutory provisions fails to reveal any prohibition, either express or implied, that would prevent a state university, acting through its personnel department, from placing its full-time contract employees on active pay status of forty hours a week. To the contrary, an administrative decision of this type, which would recognize that for purposes of sick leave accrual each such employee would be deemed to render forty hours of service per week, allows a university to satisfy its statutorily imposed duty regarding the conferral of sick leave benefits while comporting completely with the statutory framework regarding the accrual of such benefits.

If, prior to the 1967 amendment of R.C. 143.29 (now 124.38), sick leave benefits for full-time university employees accrued on the same basis as those of

other state employees, and if the amendments were not intended to effect a change in the method of accrual for such full-time employees, it follows that full-time university employees shall continue to accrue sick leave benefits in the same manner as state employees in general. This result can only be achieved if full-time university employees are placed on active pay status of forty hours per week. The placement of these employees on active pay status of forty hours per week is thus in keeping with the spirit and intent of R.C. 124.38.

Moreover, it is my opinion that the practical considerations supporting this conclusion underscore its propriety. The salary of an employee whose compensation is determined by contract is not, of course, expressed in terms of an hourly wage. Yet, R.C. 124.39 provides that upon retirement all such employees will be paid for one-fourth of the value of their accrued but unused sick leave credit. The statute further provides that such payment shall be based upon the employee's rate of pay at the time of retirement. Although the statute does not expressly so state, the context in which it appears plainly indicates that "rate of pay" refers to an hourly rate. Consequently, the operation of R.C. 124.39 requires an employee's salary to be rendered in terms of an hourly wage. If a contractual employee is placed on active pay status of forty hours a week, his compensation can be divided accordingly in order to arrive at such a rate.

In the absence of such a uniform standard, the computation of an hourly rate of pay would be both difficult and inaccurate. The administrative inability of theoretically quantifying the contractually delineated duties of faculty members in terms of hours renders impossible a computation on this basis. The only remaining method of computing an hourly rate of pay is to consider the hours actually worked—an approach the General Assembly chose not to pursue in enacting R.C. 124.38. See 1977 Op. Att'y Gen. No. 77-029 (sick leave benefits are to accrue on the basis of hours on active pay status rather than hours actually worked).

In addition, an administrative decision to place full-time contract employees on active pay status of forty hours per week is of assistance in determining the number of hours an employee is to take in the event of sickness. Under such a plan, assuming a five-day workweek, each employee who misses a day of work for one of the reasons enumerated in R.C. 124.38 will be charged with eight hours of sick leave.¹ No inquiry need be made into the precise number of hours such an employee should have or would have worked in that day.

Finally, the method for the accrual of sick leave described in this opinion is able to accommodate part-time, as well as full-time, positions in the university faculty. I am given to understand that the status of each of the many part-time faculty positions within the university is expressed in terms of its relative proportion to a full-time position. Thus, a faculty member whose contractually delineated duties are roughly one-half of those imposed upon a full-time employee, may be considered and actually designated a half-time employee. Such an individual would simply be placed on active pay status of twenty hours a week and, consequently, accrue sick leave benefits at one-half the rate of a full-time employee.

Although the foregoing practical considerations are of limited significance, they are not without relevance. R.C. 1.47, which recognizes certain basic rules of statutory construction long followed by the courts, provides in part as follows: "In

¹The assumption of a five-day work week is in no sense crucial to the method for the accrual and use of sick leave set forth in this opinion. It is intended merely as an illustration of its operation. In the event that the contractual duties of a faculty member require four days or six days of work each week, the number of hours to be taken in the case of illness would merely increase or decrease accordingly. Irrespective of the number of days each week that an employee is required to discharge assigned duties, that number will always be the divisor by which forty will be divided in order to arrive at the correct number of hours that a full-time employee must take in case of illness.

enacting a statute, it is presumed that: . . . (C) A just and reasonable result is intended; (D) A result feasible of execution is intended." Similarly, R.C. 1.49 provides in part as follows: "If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters: . . . (E) The consequences of a particular construction; (F) The administrative construction of the statute."

The application of R.C. 124.38 to the faculties of state universities presents a number of rather obvious problems. It is my opinion that placing such employees on active pay status of forty hours per week provides a solution to these problems that is fair, reasonable, feasible and in accordance with current administrative practice.

Before closing, I feel compelled to discuss briefly certain additional features of the sick leave policy about which you inquire. Since you have indicated that some full-time employees hold contracts for fewer than twelve full months of the year, it is necessary to discuss the provisions of the policy that deal with those months during which a faculty member renders no direct services to the university. The provision is somewhat ambiguous with respect to this subject and I am unable to clearly determine whether sick leave is to be accumulated throughout the year or only during that period included within the contract of employment.

One of my predecessors, in 1954 Op. Att'y Gen. No. 3575, p. 75, had occasion to consider the period during which contract teaching employees may properly accrue sick leave benefits. The first branch of the syllabus of that opinion provides as follows:

A teacher employed in the public schools under a contract for one or more years, or under a continuing contract, is a full time employee within the purview of Section 143.20, Revised Code, (486-17c, G.C.) [now R.C. 124.38], relating to sick leave and notwithstanding that his active service may be performed during only a portion of the year, is entitled to sick leave credit for each completed month of service during the calendar year, which is included in his contract of employment. Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, approved.

See also 1967 Op. Att'y Gen. No. 67-003 (whether a non-teaching employee who works nine or ten months in a calendar year is entitled to one and one-fourth days of sick leave credit for each month of the year depends upon whether he is employed on an annual basis and must, therefore, be considered a full time employee under R.C. 143.29 [now R.C. 124.38]).

There are, of course, a number of distinctions that can be drawn between the faculty of a university and the employees of public primary and secondary schools. In addition, the difference in the manner in which part-time and full-time employees accrued sick leave—a distinction afforded some weight in the foregoing analyses—has been replaced in favor of a single method based on "hours of service" for all employees. These opinions, nevertheless, articulate a principle that is as sound in its application to university faculty as it was to primary and secondary school employees. That principle provides that sick leave benefits can accrue only during the period for which an employee is under contract. This holds true irrespective of the number of installments in which or the period during which such an employee is actually compensated for services rendered. See Ops. Nos. 3575 and 67-003, *supra*.

Finally, it should be noted that although the thrust of the foregoing discussion has focused upon individuals holding positions on the university faculty, the reasoning set forth is not of such limited applicability. The staff of a state university is replete with positions the exigencies of which are substantially dissimilar to those of most positions in the service of the state. Thus, your inquiry extends not only to faculty, but also to persons holding certain administrative positions. It is my opinion that the analysis set forth herein applies with equal force to all university employees holding positions the pay range of which is not specifically established by law.

R.C. 124.14, which allows for the creation of job classifications and corresponding pay ranges for most state employees, provides in part as follows: "(G) . . . The classes established by law do not apply to administrative, research, and teaching personnel at the state universities and the Ohio agricultural research and development center." Total compensation for each of the aforementioned employees is negotiated by contract. Since such employees do not receive a statutorily designated hourly rate of pay, the number of hours on which they are placed on active pay status is nothing more than an administrative convenience that has no applicability beyond the accrual of sick leave benefits.

In conclusion, it is my opinion, and you are so advised, that for purposes of accruing sick leave benefits pursuant to R.C. 124.38, the personnel department of a state university may place all of its full-time, contract employees holding faculty, administrative or research positions on active pay status of forty hours per week throughout the period included within their contract of employment irrespective of the number of hours required of, or actually spent by, such employees in discharging their contractual duties.