

OPINION NO. 70-021**Syllabus:**

The provision in Section 143.29, Revised Code, that unused sick leave shall be cumulative up to one hundred twenty days envisions an accumulation of up to nine hundred sixty work hours (120 X 8) even though some employees may regularly work other than the normal eight hour day. (Opinion No. 3950, Opinions of the Attorney General for 1954, overruled.)

To: Keith A. Shearer, Wayne County Pros. Atty., Wooster, Ohio
By: Paul W. Brown, Attorney General, February 26, 1970

Your request for my opinion reads, in part, as follows:

"The City of Wooster is experiencing some difficulty in applying the Ohio Attorney General's Opinion at 1954 O.A.G. No. 3950 to the recent amendments to Section 143.29, Revised Code, made by the Ohio legislature. The maximum accumulation of sick leave under the present Section is 120 days; however, they cannot determine whether this means a maximum accumulation of hours of 120 X 8 or 120 X 24. If a twenty-four day must be used in determining the accumulation, we would be permitting an accumulation for firemen three times as great as for any other city employee.

"* * * * * * * *"

Section 143.29, Revised Code, provides in pertinent part:

"Each employee, whose salary or wage is paid in whole or in part by the state, and 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. * * * Unused sick leave shall be cumulative up to one hundred twenty work days, unless more than one hundred twenty days are approved by the responsible administrative officer of the employing unit. * * *

In pertinent part, Section 4115.02, Revised Code, states:

"The chief of the fire department of each municipal corporation, township, or fire district employing three or more full-time paid firemen, unless exempt under this section, shall divide the uniform force into not less than two platoons, and where the uniform force is so divided into two platoons the said chief shall keep a platoon of the uniform force on duty twenty-four consecutive hours, after which the platoon serving twenty-four hours shall be allowed to remain off duty for at least twenty-four consecutive hours, except in cases of extraordinary emergency. * * *

The syllabus of Opinion No. 3950, Opinions of the Attorney General for 1954, page 309, reads:

"Where under the provisions of Section 4115.02, Revised Code, Section 17-1a, General Code, a municipal fire department is divided into two platoons, each platoon being on duty twenty-four consecutive hours within a single day, such twenty-four hours service constitutes a single 'work day' within the purview of Section 143.29, Revised Code, Section 486-17c, General Code, which provides that full-time employees in the municipal service 'shall be entitled for each completed month of service to sick leave of one and one-fourth work days with pay.'"

I am constrained to disagree with my predecessor's conclusion. As he pointed out, at page 312 of Opinion No. 3950, supra, "A 'work day' is not defined by statute." He appears to have based such conclusion on the statement, "The use of sick leave is debited against the employee upon the basis of 'work days.' Neither the credit nor the debit side of the ledger are computed upon the basis of 'work hours.'" As the statute was then phrased, this was a true statement but I consider that it is not determinative of our question. Further, the statement is not true at the present time as sick leave is now credited on the basis of "work hours." But I believe that any philosophical speculation in this area is unnecessary.

As pointed out in Birbeck v. Wadsworth Board of Education, 46 Ohio Ops. (2d) 325 (1969), Section 143.29, Revised Code, is a law of general nature and as such must have a uniform operation throughout the state as required by Section 26, Article II, Ohio Constitution. Also the legislature reflected that it envisioned uniform operation by stating, "This section 143.29 shall be uniformly administered as to employees of each agency of the state government by the director of state personnel."

In addition, the fact that the legislature, apparently for purposes of departmental efficiency, provided that three normal work days of eight hours each should be worked within one twenty-

four hour period does not constitute a dictate that such twenty-four hour period is a work day.

It is therefore my opinion and you are hereby advised that the provision in Section 143.29, Revised Code, that unused sick leave shall be cumulative up to one hundred twenty work days envisions an accumulation of up to nine hundred sixty work hours (120 X 8) even though some employees may regularly work other than the normal eight hour day. (Opinion No. 3950, Opinions of the Attorney General for 1954, overruled.)