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EMPLOYEE—SERVED STATE FOUR OR FIVE YEARS—LATER COUNTY EMPLOYEE—SERVICE WITH STATE CAN NOT BE CREDITED AS BASIS FOR ALLOWANCE OF TOTAL THREE WEEKS VACATION IN COUNTY SERVICE.

SYLLABUS:

An employe who had served the state four or five years and who later was appointed to a position in a county, where he served for ten years, cannot have his service with the state credited to him as a basis for the allowance of a total of three weeks vacation in the county service.

Columbus, Ohio, April 13, 1955

Hon. William H. Harsha, Jr., Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

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

“We have been presented with a problem in interpreting Section 121.16 of the Revised Code of Ohio, relative to employees’ vacations.

“The specific facts in this case are that an employee served with the State of Ohio from March 17, 1940, until January 17, 1945, on which date he transferred to the service of Scioto County, Ohio, as a janitor, and will have completed fifteen years service on May 17, 1955.

“Please give us an opinion as to whether or not this employee would be entitled to three calendar weeks of paid vacation during the year 1955.”

Section 121.16 of the Revised Code, provides for vacations for employees of the several departments of the state service. That section, in so far as pertinent, reads as follows:

“Each state employee *after service of one year* is entitled during each year thereafter, to two calendar weeks, excluding legal holidays, vacation leave with full pay. Employees having *fifteen or more years of service* are entitled to three calendar weeks of such leave.”
(Emphasis added.)

The provision for vacation leave to county employes is found in Section 325.19 of the Revised Code, and reads in part, 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 service* are entitled to three calendar weeks of such leave. * * *”
(Emphasis added.)

It will be observed that the original provision giving a two weeks vacation to state employes, was enacted in 1921, long prior to the statute relative to county employes. The provision as to county employes was enacted in 1947, and provided for a maximum of two weeks. Both of these

laws were amended, but by separate acts in 1953, granting an extra week for fifteen years service. Neither statute governing the state or county makes any reference to the other and neither contains any provision as to any right to transfer vacation leave gained in one service to the other service. "Years of service", as used in each of these statutes, could have no other reasonable meaning than service in the public body with which the statute is dealing.

In my opinion, if the legislature had intended to allow such credit to be transferred, some express provision would have been made for it.

I am strengthened in that conclusion by reference to the provisions of the statute relative to sick leave. This is provided for in Section 143.29 of the Revised Code. The sick leave statute as originally enacted in 122 Ohio Laws, p. 368, related only to employes of the state, and when it was amended to include employes of the county, municipal service, and boards of education, there was added the following language:

"An employee who transfers from one public agency to another, shall be credited with the unused balance of his accumulated sick leave."

Section 143.29, *supra*, is a clear provision establishing the right to such transfer but it has no counterpart in either of the two independent statutes above mentioned relating to a right to vacation leave for employes of the state and of counties. I can see no basis for imputing to the legislature an intention which they did not in any degree manifest in the enactment of these two separate provisions as to vacation for state employes and for employes of a county.

This statute was the subject of my opinion No. 4583, Opinions of the Attorney General for 1954, rendered to Hon. James A. Rhodes, Auditor of State, on November 29, 1954, in which I held that such sick leave could be transferred.

It is accordingly my opinion that an employe who had served the state four or five years and who later was appointed to a position in a county, where he served for ten years, cannot have his service with the state credited to him as a basis for the allowance of a total of three weeks vacation in the county service.

Respectfully,
C. WILLIAM O'NEILL
Attorney General