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1. POLICE OR FIRE DEPARTMENT—PERSON PREVIOUSLY EMPLOYED BY COUNTY OR BOARD OF EDUCATION—MUNICIPALITY—LATER EMPLOYED BY STATE—ENTITLED TO SICK LEAVE CREDIT EARNED IN SUCH PREVIOUS EMPLOYMENT, TRANSFERRED AND ADDED TO SICK LEAVE CREDIT WHILE EMPLOYED BY STATE—SECTION 143.29 RC.
2. MUNICIPAL CORPORATION—FORMER EMPLOYEE—MAY WHEN SUBSEQUENTLY EMPLOYED BY STATE HAVE SICK LEAVE CREDIT—CHARTER PROVISIONS OR ORDINANCE—STATE EMPLOYEE—SECTION 143.20 RC—NOT IN EXCESS OF AMOUNT OF SCALE PROVIDED IN SECTION 143.20 RC.

SYLLABUS:

1. When a person has been previously employed by a county or board of education or as a member of the police or fire department of a municipality, and is later employed by the state, he is entitled under the provisions of Section 143.29, Revised Code, to have sick leave credit on the scale therein specified, earned in such previous employment, transferred and added to the sick leave credit earned while employed by the state.

2. A former employe of a municipal corporation may, on being subsequently employed by the state, have sick leave credit earned during his employment by the municipality under the provisions of its charter or an ordinance establishing a system of sick leave transferred and added to sick leave acquired as such state employe, pursuant to Section 143.20, Revised Code, but not in an amount in excess of the scale provided in said Section 143.20.

Columbus, Ohio, November 29, 1954

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

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

“Since January, 1953, the Auditor of State has employed several persons who previously worked for school districts, cities and counties. We have not permitted the transfer of accumula-

tive sick leave of such employes to be credited on the personnel records of the Auditor of State.

"It has been found to be to the advantage of the State if we can employ persons who have had previous experience with another unit of government; therefore, the transferring of sick leave credits becomes important from a fiscal viewpoint and the welfare of the employe, as four months' pay can be involved.

"We now have an employe who formerly worked for a county, who desires to use the sick leave accumulated while a county employe.

"Your Opinion No. 3643, dated March 25, 1954, has been reviewed, and while it appears the second branch of the syllabus precludes us from transferring a sick leave credit of a previous county employe to the State service, we believe that we may be authorized to do so by the fourth branch of such syllabus. It should be stated that this opinion was rendered to a county official and the sick leave credit on the state level was not a question therein.

"Can a person who was previously employed by a school, county or municipality, and who now is employed by the state, have sick leave credits earned while employed by school, county or municipal units of government transferred and added to sick leave credits earned while employed by the state government?"

The statute providing for sick leave for public employes, as originally enacted, in 122 Ohio Laws, p. 368, provided for sick leave for employes of the state, only. This act was codified as Section 486-17c of the General Code. Throughout the section as thus enacted, references were made to "state service" and "state agency." In the amendment of this statute, found in 123 Ohio Laws, p. 657, counties, municipalities and boards of education were added to the scope of the law, and the references to "state service" and "state agency" were changed to "public service" and "public agency."

As carried into the Revised Code, the law appears as Section 143.29, Revised Code, and reads as follows:

"Each full-time employe, whose salary or wage is paid in whole or in part by the state, and each full-time employe in the various offices of the county service and municipal service, and each full-time employe of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth work days with pay. Employees may use sick leave, upon approval of the responsible administrative officer of the em-

ploying unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness or death in the employee's immediate family. Unused sick leave shall be cumulative up to ninety work days, unless more than ninety days are approved by the responsible administrative officer of the employing unit. The previously accumulated sick leave of an employee who has been separated from the public service may be placed to his credit upon his re-employment in the public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave. Provisional appointees or those who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted full-time employees. The responsible administrative officer of the employing unit may require the employee to furnish a satisfactory affidavit that his absence was caused by illness due to any of the causes mentioned in this section. This section shall be uniformly administered as to employees in each agency of the state government.

“This section does not interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employees for unused sick leave.”

In the above amendment the only changes that were made were those above noted, and the addition of the last sentence in the first paragraph, reading as follows :

“This section shall be uniformly administered as to employees in each agency of the state government.”

In the opinion to which you refer, to wit, No. 3643, dated March 24, 1954, I undertook, in response to the request, to answer the question as to what is meant by the words, “each agency of the state government,” and I stated as shown by the second syllabus :

“The words ‘each agency of the state government,’ as used in Section 143.29, Revised Code, include the various departments and agencies of the state government, but do not include the several political subdivisions therein mentioned.”

It seemed evident to me then, and it still does, that the new sentence added to the law referring to “each agency of the state government” was only intended to relate to the various departments of *the state government* itself, as distinguished from the subdivisions added.

However, the sentence there under consideration, and the definition as given, do not in my opinion have any bearing on the question which you now submit as to the right of a person who had accumulated sick leave credit in the service of the various subdivisions named, to retain and use that credit when he enters the state service.

In the section, as originally enacted, it was provided :

“* * * The previously accumulated sick leave of an employee who has been separated from the *state service* may be placed to his credit by the state civil service commission upon his re-employment in the *state service*. An employee who transfers from one *state agency* to another *state agency* shall be credited with the unused balance of his accumulated sick leave. * * *”
(Emphasis added.)

In the amended form, these sentences were made to read as follows :

“* * * The previously accumulated sick leave of an employee who has been separated from the *public service* may be placed to his credit upon his re-employment in the *public service*. An employee who transfers from one *public agency* to another *public agency* shall be credited with the unused balance of his accumulated sick leave.* * *”
(Emphasis added.)

Having in mind the manifest intention of the amendment was to extend the benefits of sick leave to large groups of public employes and to enable them to retain their credit when they transferred from one “public agency” to another, it seems to me that there can be no doubt as to the right of one who has obtained such credit in the employment of a county or other subdivision, to transfer it and retain it when he enters the employment of the state. The fourth syllabus in the opinion to which you refer, reads as follows :

“Under the provisions of Section 143.29, Revised Code, a person coming into the employment of any of the various offices of the county service, is entitled to the benefit of sick leave credit previously accumulated by him in any of the public agencies named in such section.”

This statement mentioned only a transfer from one county to another because that was the substance of the inquiry. The same conclusion would according to the wording of the statute, result when he transfers to state employment from employment by either of the public agencies named in the statute.

“Public agencies” would include a municipality, and accordingly when a former employe of a municipality enters the service of the state it would appear that he would be entitled to a transfer of sick leave credit earned in his previous employment. This conclusion, however, must be subject to some modification, since municipalities are not under the control of the legislature, but have the right under the Home Rule Amendment to the Constitution to “exercise all powers of local self-government.”

It was said in the course of the opinion:

“The right of a municipality under home rule, to deal with matters relating to its own government and its own affairs in a manner differing from the state laws has been established by numerous decisions.”

See *Froelich v. Cleveland*, 99 Ohio St., 376; *Dillon v. Cleveland*, 101 Ohio St., 354; *Fitzgerald v. Cleveland*, 88 Ohio St., 338; *Mansfield v. Endley*, 38 Ohio App., 528; *Perrysburg v. Ridgeway*, 108 Ohio St., 245. But it was also held in that opinion that policemen and firemen being state rather than municipal employes, do come within the purview of said Section 486-17c. As stated in the second branch of the syllabus:

“A city may provide sick leave benefits for members of its police force and firemen, which may be greater but not less than those provided for in Section 486-17c, General Code.”

However, it would be no invasion of the “home rule” rights of a municipality for the legislature to grant to employes of the state sick leave credit earned by them while in the previous employ of a municipality, at least up to the rate fixed by Section 143.29 supra, and this is what the legislature has, in effect, done.

It should be noted, however, that it does not follow that a municipality which has, by charter or ordinance established a system of sick leave for its employes, should be required, in the absence of a provision in its legislation to that effect, to allow its employes who come to it after service for the state or other public agencies, to bring their sick leave credit with them, and have the benefit of it in the municipal system.

Accordingly, in specific answer to your question it is my opinion:

1. When a person has been previously employed by a county or board of education or as a member of the police or fire department of a municipality, and is later employed by the state, he is entitled under the

provisions of Section 143.29 Revised Code, to have sick leave credit on the scale therein specified, earned in such previous employment, transferred and added to the sick leave credit earned while employed by the state.

2. A former employe of a municipal corporation may on being subsequently employed by the state, have sick leave credit earned during his employment by the municipality under the provisions of its charter or an ordinance establishing a system of sick leave transferred and added to sick leave acquired as such state employe, pursuant to Section 143.20, Revised Code, but not in an amount in excess of the scale provided in said Section 143.20.

Respectfully,

C. WILLIAM O'NEILL

Attorney General