

OPINION NO. 82-064**Syllabus:**

An individual who returns to county employment with over one year of prior county service is entitled to begin accruing vacation benefits at the rate set forth in R.C. 325.19(A) immediately upon reemployment. Pursuant to R.C. 325.19(C) the employee is also entitled to use such leave at any time during the year in which it accrues. (1965 Op. Att'y Gen. No. 65-125, overruled.)

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: William J. Brown, Attorney General, September 28, 1982

I have before me your opinion request concerning the use of vacation leave granted under R.C. 325.19. It is my understanding that your question pertains to an individual with over seven years of previous county service who recently became employed by the county auditor. This employee would like to take vacation leave after having worked less than one year in his current position with the auditor. 1965 Op. Att'y Gen. No. 65-125 concluded, however, that, "[t]he right of a county employee to vacation leave under [R.C. 325.19] accrues after the completion of employment for a one year period following the date of re-employment, where the employee has been re-hired after terminating previous county employment." You, therefore, ask whether any of the amendments to R.C. 325.19 since the issuance of Op. No. 65-125 alter the conclusion reached in that opinion.

At the time Op. No. 65-125 was issued, R.C. 325.19 provided in pertinent part that:

[t]wo calendar weeks of leave with pay will have been earned and will be due an employee upon attainment of the first anniversary of employment and annually thereafter, and three calendar weeks of leave with pay will have been earned and will be due an employee upon attainment of the fifteenth anniversary of employment and annually thereafter. (Emphasis added.)

1959 Ohio Laws 627 (Am. Sub. H.B. 208, eff. Nov. 4, 1959). Based on this language, the opinion concluded that a county employee became entitled to two weeks of vacation leave upon completion of the first year of employment. Relying in part on 1963 Op. Att'y Gen. No. 40, p. 121, which interpreted the phrase "anniversary of employment," as used in R.C. 121.161, as meaning the annual recurrence of the date of last hire, the opinion concluded that after the first year of employment, an employee became entitled to vacation benefits on each subsequent anniversary of the date of last hire. The opinion then stated that where a person returned to county employment, "twelve consecutive months of employment must next precede

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the commencement of vacation leave regardless of the number of years of prior employment." Op. No. 65-125 at 2-282.

R.C. 325.19 has been amended several times since issuance of that opinion and currently reads, in part, as follows:

(A) Each full-time employee in the several offices and departments of the county service, including full-time hourly-rate employees, after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay. One year of service shall be computed on the basis of twenty-six biweekly pay periods. A full-time county employee with eight or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay. A full-time county employee with fifteen or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred sixty hours of vacation leave with full pay. A full-time county employee with twenty-five years of service with the county or any political subdivision of the state shall have earned and is entitled to two hundred hours of vacation leave with full pay. Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period for those entitled to eighty hours per year; four and six-tenths hours each biweekly period for those entitled to one hundred twenty hours per year; six and two-tenths hours each biweekly period for those entitled to one hundred sixty hours per year; and seven and seven-tenths hours each biweekly period for those entitled to two hundred hours per year.

. . . .

(C) Days specified as holidays in section 124.19 of the Revised Code shall not be charged to an employee's vacation leave. Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment; provided, the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than three years. An employee is entitled to compensation, at his current rate of pay, for the pro-rated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment. (Emphasis added.)

R.C. 325.19(A) states that a full-time county employee "shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay," (emphasis added), language similar to that contained in Am. Sub. H.B. 208. R.C. 325.19 currently, however, contains provisions concerning the accrual and use of such vacation leave not found in the statute as in effect when Op. No. 65-125 was issued. For those employees entitled to eighty hours of vacation leave per year, the statute now provides that "[s]uch vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period." R.C. 325.19(A). Concerning the time when vacation leave may be taken, R.C. 325.19(C) states that, "[v]acation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment," with a provision for the carry over of vacation leave in special and meritorious cases with permission of the appointing authority.

Because a full-time county employee does not become entitled to vacation leave under R.C. 325.19 until he has attained one year of service with the county or

any other political subdivision of the state, such an employee does not accrue vacation benefits during his first year of employment.¹ The provision contained in R.C. 325.19(C) which requires that vacation leave be taken during the year in which it accrues does not, therefore, apply to an individual in his first year of employment. After the first year of employment, however, an employee begins accruing vacation leave at the rate of three and one-tenth hours every two weeks, R.C. 325.19(A), and must use such leave during the year in which it accrues and prior to the next recurrence of the anniversary date of his employment, unless his appointing authority allows him to carry such leave over to the following year. R.C. 325.19(C).

As noted above, Op. No. 65-125 interpreted the phrase "anniversary of employment" as the annual recurrence of the date of last hire. Since issuance of that opinion, however, the legislature has enacted R.C. 9.44, 1969-1970 Ohio Laws, vol. II, 1917 (Sub. H.B. 202, eff. Aug. 27, 1970), which specifies that a rehired county employee's anniversary date, for purposes of vacation leave, is, with certain exceptions, the anniversary date of his prior service. Applying the provisions of R.C. 325.19 and R.C. 9.44 to the situation you pose, the employee, having over seven years of county service, has already completed one year of service, and is, therefore, entitled to begin accruing vacation benefits immediately upon reemployment and may use such benefits as soon as they accrue. Since R.C. 325.19 currently provides for the accrual of vacation benefits on a biweekly basis after one year of service and specifies that such accrued vacation leave shall be used, with certain exceptions, during the year in which it accrues, and because of the enactment of R.C. 9.44, defining anniversary of employment as the anniversary of prior service, I hereby overrule Op. No. 65-125.

It is, therefore, my opinion, and you are advised, that an individual who returns to county employment with over one year of prior county service is entitled to begin accruing vacation benefits at the rate set forth in R.C. 325.19(A) immediately upon reemployment. Pursuant to R.C. 325.19(C) the employee is also entitled to use such leave at any time during the year in which it accrues. (1965 Op. Att'y Gen. No. 65-125, overruled.)

¹Pursuant to R.C. 9.44 a county employee earning vacation credits currently is also entitled to service credit for time served with the state for purposes of computing his vacation benefits.