

OPINION NO. 74-030

Syllabus:

R.C. 5923.05 provides for military leave for public employees of not to exceed thirty-one calendar days in any one calendar year.

To: William E. Garnes, Administrator, Ohio Bureau of Employment Services,
Columbus, Ohio
By: William J. Brown, Attorney General, April 17, 1974

I have before me your request for my opinion, which reads as follows:

"We have recently received Personnel Procedure Memo No. 5 issued on November 16, 1973, a copy of which is attached, and I would like to call your attention to Section II, page 3, which deals with Military Leave. (5923.05 Rev. Code) While there has been no change in the statutes governing this type of leave, we note that a new interpretation was made in paragraph number one and two which could create somewhat of a problem. We desire that you give us your opinion on this matter. Specifically, paragraph one, states thirty-one working days. A former interpretation was thirty-one calendar days. Paragraph two states 248 hours at the end of the sentence and this was formerly 176 hours."

R.C. 5923.05, mentioned in your letter, reads as follows:

"All officers and employees of the state or the political subdivisions thereof who are members

of the Ohio national guard, the Ohio defense corps, the Ohio naval militia, or members of other reserve components of armed forces of the United States are entitled to leave of absence from their respective duties without loss of pay for such time as they are in the military service on field training or active duty for periods not to exceed thirty-one days in any one calendar year."

The phrase "thirty-one days in any one calendar year" is not exactly the same as "thirty-one calendar days in any one calendar year", but the implication is the same. If the General Assembly had intended for the "days" to be working days, instead of calendar days, surely it would have said so.

I can think of no reason why the legislature would have granted paid leave for 31 working days, or 6 weeks plus one day. The more reasonable interpretation is that the statute grants leave for 31 calendar days, the length of most months.

In Opinion No. 2614, Opinions of the Attorney General for 1940, Vol. II, page 727, my predecessor construed G.C. 5273-2, the forerunner of R.C. 5923.05. That section provided for leave of absence on military duty for each day absent on leave, not to exceed fifteen days in any one calendar year. My predecessor advised at page 729 that "any Sundays falling within the period of absence of an employee while on military duty, shall be included in the fifteen days allowable. * * *" I can see no reason to disagree with this conclusion, which is applicable by analogy to the instant case.

Since a public employee is entitled to no more than 31 calendar days of leave under R.C. 5923.05, he is entitled to a maximum of 176 working hours of leave, rather than 248.

In specific answer to your question, it is my opinion and you are so advised that R.C. 5923.05 provides for military leave for public employees of not to exceed thirty-one calendar days in any one calendar year.