

Note from the Attorney General's Office:

1977 Op. Att'y Gen. No. 77-094 was overruled by
1993 Op. Att'y Gen. No. 93-027.

OPINION NO. 77-094**Syllabus:**

1. A county veteran's service officer and other employees are "employees" covered and eligible for benefits under R.C. 124.391.
2. A soldiers' relief commission is the "appointing authority" for the purpose of R.C. 124.391, and it therefore has the power to promulgate the adoption of a policy pursuant to R.C. 124.391.
3. A soldiers' relief commission has the authority to promulgate a policy which would entitle a county veterans' service officer and other employees to payment in full for all accumulated sick leave pursuant to R.C. 124.391.
4. The policy must be adopted prior to the retirement of the employee in order for him to receive benefits pursuant to such policy, but need not be adopted prior to the employee's expression of an intent to retire.

To: L. Craig Hallows, Miami County Pros. Atty., Troy, Ohio
By: William J. Brown, Attorney General, December 19, 1977

Your request for my opinion states the following questions:

1. Are a county veterans' service officer and other employees "employees" covered and eligible for benefits under R.C. 124.391?
2. Is the Soldiers' Relief Commission the "appointing Authority" under R.C. 124.391 and therefore, do they have the power to promulgate the adoption of such a policy? If not, who is the appointing authority?
3. Assuming the answer to the first part of question 2 above is in the affirmative, did they properly promulgate a policy which would entitle the service officer and other employees to payment for their full accumulated unused sick leave?
4. Does the fact that the policy was adopted prior to retirement but subsequent to the expression of intent to retire vary or in any way affect payment of full accumulated but unused sick leave?

Soldier's relief commissions are provided for in R.C. 5906.02. In R.C. 5901.07, such commissions are given the power to, inter alia, employ a county veteran's service officer. That section further allows a commission to fix the compensation of the service officer, as well as other of its employees.

Soldier's relief commissions, pursuant to R.C. 5901.02, are to be established in each county of this state. Employees of the commission are considered county employees. 1962 Op. Att'y Gen. No. 3057. County employees are, pursuant to R.C. 124.38, entitled to 4.6 hours sick leave credit for each eighty hours of service. R.C.

124.391, which concerns conversion of this sick leave credit, upon retirement, provides in pertinent part that:

All employees covered by section 124.38 of the Revised Code but not eligible for benefits under section 124.39 of the Revised Code . . . shall at the time of their retirement receive pay for all or part of their unused sick leave to the extent consistent with the policy of the appointing authority in effect. The appointing authority shall promulgate the adoption or modification of any such policy by written notice to each employee. The promulgation of a written notice that the appointing authority has determined that employees will receive any part of their unused sick leave constitutes a policy for purposes of this section. An appointing authority may include in its policy a requirement that an employee have a minimum number of years service with the unit in order to be eligible for payment for unused sick leave . . .

Since employees of a soldier's relief commission are county employees, they are covered by R.C. 124.38 and not eligible for benefits under R.C. 124.39. As a result, they are eligible for benefits provided under R.C. 124.391. In order for a county veteran's service officer to be eligible for such benefits, he must be an employee. R.C. 124.01(F) defines "employee" for the purpose of R.C. Chapter 124. as

. . . any person holding a position subject to appointment, removal, promotion or reduction by an appointing officer.

R.C. 5901.07 provides in pertinent part that:

The soldier's relief commission may employ a "county veterans' service officer". . . The compensation of the service officer and of any employee and any expenses incurred under this section shall be paid out of funds appropriated to the commission, pursuant to section 5901.11 of the Revised Code.

Because a county veteran's service officer is subject to appointment and removal by an appointing officer, it is my opinion that such an officer is an employee for the purpose of R.C. 124.391.

Your second question raises the issue of which entity is the appointing authority of a county veteran's service officer. While the officer, as discussed earlier, is a county employee, further analysis is necessary in determining whether it is the Commission or the board of county commissioners which acts as the appointing authority. R.C. 124.01(E) sets forth the following definition:

(D) "Appointing Authority" means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board or institution.

R.C. 5901.07 vests in a soldier's relief commission authority to hire a county veteran's service officer and to pay him out of funds appropriated to the commission, pursuant to R.C. 5901.11. That section provides that the Commission shall determine and certify to the board of county commissioners the amount of funds necessary for the relief of eligible recipients of its aid. Further, the board of county commissioners shall make the necessary levy, not to exceed five-tenths of a mill, on the property in the county. The county board of commissioners must provide these funds to the commission and a writ of mandamus will issue to compel payment. State ex rel. Binder v. Board, 174 Ohio St. 23 (1962). Because a soldier's relief commission is vested with the power to appoint, remove and perform other

acts related to the employment of a county veteran's service officer, it is my opinion that such a commission is that appointing authority for the purpose of R.C. 124.391 and has the power to promulgate the adoption of a policy in regard to sick leave credit.

Your third question concerns the propriety of a soldier's relief commission promulgating a policy which would entitle the service officer and other of its employees to payment for their accumulated sick leave. R.C. 124.391 allows the appointing authority complete discretion in determining through a policy the amount of sick leave credit to be paid to an employee upon retirement. That section specifically provides that eligible employees ". . . shall at the time of their retirement receive pay for all or part of their unused sick leave. . ." Accordingly, it is my opinion that a soldier's relief commission may adopt a policy to pay the county service officer, as well as all of its other employees, in full for all accumulated sick leave, pursuant to R.C. 124.391.

With respect to your fourth question, the fact that a policy was adopted prior to retirement but subsequent to the expression of intent to retire does not vary or in any way affect payment of accumulated sick leave. The only requirement of R.C. 124.391 is that the payment policy be in effect prior to an affected individual's retirement.

Therefore, it is my opinion, and you are so advised, that:

1. A county veteran's service officer and other employees are "employees" covered and eligible for benefits under R.C. 124.391.
2. A soldier's relief commission is the "appointing authority" for the purpose of R.C. 124.391, and it therefore has the power to promulgate the adoption of a policy pursuant to R.C. 124.391.
3. A soldier's relief commission has the authority to promulgate a policy which would entitle a county veteran's service officer and other employees to payment in full for all accumulated sick leave pursuant to R.C. 124.391.
4. The policy must be adopted prior to the retirement of the employee in order for him to receive benefits pursuant to such policy, but need not be adopted prior to the employee's expression of an intent to retire.