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1. SICK LEAVE—TEACHER EMPLOYED IN PUBLIC SCHOOLS UNDER CONTRACT FOR ONE OR MORE YEARS OR A CONTINUING CONTRACT—FULL TIME EMPLOYEE—ENTITLED TO SICK LEAVE CREDIT FOR EACH COMPLETED MONTH OF SERVICE DURING CALENDAR YEAR—SECTION 143.20 RC.
2. DEDUCTION FROM TEACHER'S SALARY—ABSENCE FROM WORK—BASIS ADOPTED BY BOARD OF EDUCATION SHOULD OPERATE EQUALLY AND FAIRLY.
3. SALARY OF TEACHER ON ANNUAL BASIS—RIGHT OF TEACHER TO SICK LEAVE—PROPER DEDUCTION FROM WAGES—ABSENCE NOT COVERED BY SICK LEAVE CREDIT OR OTHER LEGAL EXCUSE—SECTION 143.29 RC.

## SYLLABUS:

1. A teacher employed in the public schools under a contract for one or more years, or under a continuing contract, is a full time employee within the purview of Section 143.20, Revised Code, (486-17c, G. C.), relating to sick leave, and notwithstanding his active service may be performed during only a portion of the year, is entitled to sick leave credit for each completed month of service during the calendar year, which is concluded in his contract of employment. Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, approved.

2. The determination of the deduction which should be made from a teacher's salary because of absence from work not covered by sick leave credit or other legal excuse, is a matter for determination by the board of education, in the exercise of a sound discretion, and any basis adopted by the board should operate equally and fairly as to all teachers.

3. The salary of a teacher is on an annual basis, and the number of installments or the times of paying the same do not in any way affect a teacher's right to sick leave credit as determined by Section 143.29, Revised Code, 486-17c, G. C., or the proper deduction from his wages in case of absence not covered by sick leave credit or other legal excuse.

Columbus, Ohio, March 10, 1954

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

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

“A question has arisen as to the method to be used for determining the daily salary earned by a teacher in the public schools.

“Teachers are employed by contracts with the Boards by which they are hired (R.C. Sec. 3319.08). The school year is defined by R.C. Sec. 3313.62 and schools are to be in session not less than 32 weeks (R.C. Sec. 3313.48).

“For the purpose of determining what deductions are to be made for absence, particularly where sick leave is used up, for each day of such absence how shall the average daily salary be computed?

“Does a school teacher who has a contract by virtue of R.C. 3319.11, either as a continuing service contract or a limited contract, accumulate sick leave credit for *each* calendar month in *each* calendar year while holding such contract even though there may be during such calendar year several months (July and August) and parts of several other months (September and June) during which months such teacher is not actually engaged in teaching, due to the schools being closed and during which time off no salary is paid to the teacher? In short, does a school teacher accumulate sick leave by reason of the annual salary for the 12 calendar months which would amount to 15 days for the year, or does such school teacher earn sick leave only for the *full* calendar months such teacher is actually teaching?

“In the event that your opinion would hold that a school teacher is entitled only to sick leave under 143.29 for such *full* calendar months actually engaged in teaching, would it make any difference if such teacher were paid her salary in 12 equal monthly payments?”

The so-called “sick leave” statute, Section 143.29, Revised Code, 486-17c, G.C., in so far as pertinent reads as follows:

“Each full-time employee, whose salary or wage is paid in whole or in part by the state, and each full-time employee in the various offices of the county service and municipal service, and *each full-time employee* 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 employing 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. \* \* \*” (Emphasis added.)

The meaning of the above quoted provisions as to the bulk of the employes of the state and political subdivisions is fairly clear, for in so far as they are “full time” employes, they work throughout the year and are paid monthly or semi-monthly, and it is not difficult to determine when they have performed a “completed month of service,” or when they have gained the fifteen days sick leave credit which evidently results from a year’s service.

But applying the statute to a school teacher who works only certain weeks in a calendar year, and who may be paid in a variety of ways, the problem becomes manifestly somewhat complicated, and various questions arise. Is such teacher a “full time employee”? How and when does he complete a month of service? Is he in service only on the days when he is actually teaching or is he in service throughout the calendar year? Is the minimum annual salary prescribed by the law his salary for the calendar year, or is it a salary only for the portion of the year when his school is in session?

In the school code, we find several provisions which deal with the “school year” not always seemingly consistent as to the intended meaning of that expression. Section 3313.62, Revised Code,, reads as follows:

“The school year shall begin on the first day of July of each calendar year and close on the thirtieth day of June of the succeeding calendar year. A school week shall consist of five days, and a school month of four school weeks.”

Section 3319.07 et seq. of the Revised Code, deals with the employment of teachers and requires contracts of employment to be made for the employment of all teachers. These statutes plainly indicate that teachers are to be employed by the year.

Section 3319.08, Revised Code, divides teachers’ contracts into two classes, namely “continuing contracts”, which are to remain in effect until the teacher resigns, retires or is removed, and “limited contracts”, which may be for a term not to exceed five years. The language of this section bearing on that subject is:

“A limited contract for a superintendent is a contract for such term as authorized by section 3319.01 of the Revised Code, and for all other teachers *for a term not to exceed five years.*” (Emphasis added.)

Section 3319.12, Revised Code, provides in part, as follows:

“Each board of education shall cause notice to be given annually not later than the first day of July to each teacher who holds a contract valid for the *succeeding school year*, as to the salary to be paid such teacher *during such year*. Such salary shall not be lower than the salary paid during the *preceding school year* unless such reduction is a part of a uniform plan affecting the entire district.” (Emphasis added.)

Other statutes relating to teachers' contracts stipulate the number of years which these contracts must in some cases cover. Section 3319.09, Revised Code, contains among other definitions, the following:

“(B) ‘Year’ as applied to term of service means actual service of not less than one hundred twenty days within a school year; provided that any board of education may grant a leave of absence for professional advancement with full credit for service.”

This provision might suggest that a teacher's contract is intended to be for only a limited portion of a calendar year and of the “school year” as defined in Section 3313.62 *supra*. I do not consider that it has such effect. It merely places a minimum on the amount of actual teaching service which may be required of a teacher with whom a contract is to be made for a given year or for several years.

My conclusion, therefore, is that a teacher who is under contract for one or more years, is an “employee” of the school board for the entire term of such contract, and although required to perform teaching service only during certain portions of that term is, nevertheless, a “full time employee”, and as such, is entitled to the accumulation of sick leave credit at the rate of one and one-fourth days for each calendar month, whether or not school is in session. If we should adopt any other rule, then we would find it necessary to dissect the service of all other so-called full-time employees, who are allowed vacations of greater or less extent, days off for holidays and week end extensions, for the purpose of ascertaining their precise right to sick leave credit. It appears to me that the only difference between a teacher and other regular employees is that by reason of the nature of his work the former concentrates his active service into a smaller portion of the year, and is allowed a longer period of vacation than other regular full-time employees.

As bearing on the attitude of the law as to what constitutes a year of teachers' service, I call attention to the statutes relative to minimum salaries. In Section 3317.06, Revised Code, there is set forth a scale of minimum salaries which must be paid, depending on the teacher's scholastic attainments. For instance, teachers with a bachelor's degree are to receive a beginning salary of \$2500.00 and an annual increase of \$110.00 "for each of the first five years of service." The other schedules contain a like provision as to an increase for each of the first five years of service. The statute further provides that "in computing years of service, credit shall be given for each school year the teacher was in service as a regular teacher in any public school system." I think it is clear that years of service as used here, means a year of twelve months, or rather, the "school year."

We may note also, the provisions of the law as to the teachers retirement system. There it is provided in Section 3307.31, Revised Code:

"The state teachers retirement board shall credit *a year of service* to any teacher who is employed on a full-time basis in a school district for the number of months the regular day schools of such district were or shall be in session in said district within any year, \* \* \*"  
(Emphasis added.)

The actual length of the teaching period in any school year is left in a measure to the discretion of the board of education of the district. Section 3821.04, Revised Code, relates to compulsory attendance of pupils, and requires pupils between the ages of six and eighteen to attend school "for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year," which would be equivalent to one hundred sixty days.

I am informed that in some districts school is maintained for a period of one hundred sixty days, whereas in many others school is maintained for one hundred eighty days. There are exceptional instances in which school is carried on for a longer period than one hundred eighty days.

In an opinion by my immediate predecessor, being No. 1605, Opinions of the Attorney General for 1950, page 173, it was held:

"1. Persons employed by a board of education are full time employes of such board if such employment for the particular line of work encompasses all of the available opportunity to work in the particular occupation and includes, among others, all those employed on an annual basis or otherwise continuously employed.

“2. Teachers employed to teach one hundred and twenty days a year, commonly referred to as an eight-months school year, or longer periods in a given school year, are full time employees of a board of education within the meaning of Section 486-17c, General Code, as amended by the 98th General Assembly, House Bill 109, effective October 25, 1949”

Supporting these propositions, a number of cases were cited holding in effect that “full time” signifies a normal and customary period of work or labor for the kind of work the employee performs. *Beaver Dam Coal Co. v. Hocker*, 202 Ky., 398; *Cote v. Batchelder Worcester Co.*, 160 A., 101; *Johnston v. Wagon Co.*, 118 Wisc., 438; *Hendricks v. Smith*, 25 Ky., 699.

I concur in the conclusion announced in the opinion above referred to. In Opinion No. 2496, issued April 17, 1953, I referred to it with approval and held:

“The sick leave credit to which a public school teacher is entitled under Section 486-17c, General Code, is accumulated during the time that the teacher is absent from duty because of illness, the same as during the time when he is at his work.”

That opinion was based on the proposition that a full time employee, such as a teacher, is accumulating sick leave credit month by month, so long as he is a full time employee, and that his month of completed service is not broken merely because he happens to be sick or on a vacation.

Having determined the basis on which a teacher accumulates sick leave credit, I turn to your question as to the deduction that should be made from the teacher's wage in case he is absent from teaching one or more days in excess of such credit. The same question will arise as to any absence without legal excuse. The statute gives us no explicit direction. However, since, as already shown, the schools are actually conducted for varying periods, depending upon the will of the board of education, it seems clear that the amount which represents the average daily wage of a teacher must be related in some degree to his actual teaching time and would vary according to the period prescribed in his district.

The term “school year” is not always used in the statutes as running from July 1 of one year to June 30 of the next, as set out in Section 3313.62, *supra*. In Section 3317.02, Revised Code, provision is made for certain payments from the school foundation fund for each pupil, and the section provides in part:

“The payments shall be made only for a school year of not less than one hundred eighty days, inclusive of such legal school holidays established by section 3313.63 of the Revised Code as occurred during regular school weeks and on which days schools were not in session; inclusive of such other days, not exceeding two, approved by the superintendent of public instruction for the professional meeting of teachers when such days occurred during a regular school week and the schools were not in session; and inclusive of all days that schools were not in session because of disease epidemic, temporary circumstances rendering the building unfit for school use, or other public calamity.”

The language of this statute makes it plain that holidays and the other special days mentioned are to be considered as a part of the period of the active school year; and it is my opinion that as a matter of fairness to the teacher the days above specially mentioned are to be considered as part of the teacher's period of teaching in a given school year.

I am informed that in many districts the established practice for determining the day's wage which is to be deducted from a teacher's pay because of absence not covered by sick leave credit or other legal excuse, is to divide the annual salary of the teacher as fixed by his contract by the number of days which the board has determined upon as the length of the current school year, such period to include the holidays and other special days mentioned in Section 3317.02, Revised Code, relating to participation by the district in the school foundation fund. This rule may appear somewhat harsh, for the reason that it assumes that a teacher does no school work whatsoever on Saturday and Sunday, and second, because the salary which a teacher receives for one day of actual teaching must cover his living expense for several days.

Another rule followed in certain departments of public service, where employes work throughout the year, is to deduct an amount equal to a month's salary, divided by the number of days in the month.

A third proposition which lies between these extremes is to consider that the school term which is based on a given number of five day weeks, actually covers a period represented by that number of weeks multiplied by seven days. This, in case of a thirty-six weeks school year would cover 252 days and the deduction would be  $\frac{1}{252}$  of the year's salary.

Since the statutes throw no light on the matter, there seems to be no room for interpretation, and hence I must decline to lay down an absolute rule. The board of education has the right to determine the general con-

ditions which will enter into its contracts with its teachers, and also has authority under Section 3313.20 of the Revised Code, to make rules for its government and the government of its employes, and in my opinion it lies in the sound discretion of the board to establish a basis for deduction for a teacher's absence. Of course any rule adopted should be fair to all, and should be understood by the teacher when he accepts his contract.

Your letter raises the further question whether the situation is affected by differences of practice as to the periods at which salaries are paid. That difference could not in my opinion have any bearing on either of your questions. The teacher is entitled to an *annual* salary of a certain amount. It might be paid quarterly, monthly, semi-monthly or weekly throughout the calendar year, or divided into payments more or less related to the number of months that the school is actually in session. No such differences could in any way affect accumulation of sick leave credit or the average daily salary earned and received by the teacher.

Accordingly, in answer to the questions submitted, it is my opinion :

1. A teacher employed in the public schools under a contract for one or more years, or under a continuing contract, is a full time employee within the purview of Section 143.20, Revised Code, 486-17c, G.C., relating to sick leave, and notwithstanding his active service may be performed during only a portion of the year, is entitled to sick leave credit for each completed month of service during the calendar year, which is included in his contract of employment. Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, approved.

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Respectfully,  
C. WILLIAM O'NEILL  
Attorney General