

**OPINION NO. 77-100****Syllabus:**

1. A teacher is not totally unemployed, pursuant to R.C. 4141.01 (M), in any week with respect to which remuneration has been or will be paid to him. If a teacher will be retroactively reimbursed for salary not paid during a period in which the schools are closed, such teacher is not entitled to unemployment compensation during this period. (1974 Op. Att'y Gen. No. 74-096, clarified)
2. Whether a school board must pay a teacher for makeup days after the schools reopen is not a question of state law. Rather, it is a matter to be controlled by the local contract between the school board and its teachers. The determination of this matter has no bearing on a teacher's right to unemployment benefits during the time the schools are closed, provided that such compensation does not constitute retroactive payments for the period during which unemployment benefits are claimed.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 22, 1977**

I have before me your request for a clarification of my opinion in 1974 Op. Att'y Gen. No. 74-096 which states in part as follows:

Public school employees, who are otherwise eligible, are entitled to apply for and receive unemployment compensation during the period of time that schools are not in session because of lack of funds provided they perform no service and receive no salary from the school district with respect to the period of the layoff.

Your specific question is as follows:

If a school district closes due to a lack of funds and a teacher is unable to work for a period of time, is such teacher eligible for unemployment compensation if 1) the closed days are subsequently made up in the following year when the school reopens; and 2) the teacher's full contract salary is paid before the end of the school year?

Before addressing your specific question, I shall briefly summarize the statutes upon which my opinion No. 74-096, *supra*, was predicated and clarify the conditions upon which a teacher's rights to unemployment benefits initially rest. In doing so, I will be exceeding somewhat the scope of your request. Such additional clarification of my former opinion is necessary, however, to answer the question you have raised.

In 1973 the General Assembly enacted Am. Sub. S.B. 52, which extended the unemployment compensation laws to cover employees of local government. R.C. 4141.01 (A) (1), which defines the term "employer" for the purposes of R.C. Chapter 4141, now expressly includes the state, its instrumentalities, its political

subdivisions and their instrumentalities. R.C. 4141.01 (B) (2) (e) (i) has expressly extended the term "employment" to include service performed by an individual in the employ of any political subdivision of the state or any instrumentality of that political subdivision. Thus, there can be no doubt that public school teachers are covered by the unemployment compensation laws.

Moreover, R.C. 4141.29 (I) expressly provides that benefits based on services included in the term unemployment under R.C. 4141.01 (B) (2) (a) (i) are payable in the same amount, on the same terms and are subject to the same conditions as benefits payable on the basis of other service covered by R.C. Chapter 4141, with the exception that public school employees are disqualified from the receipt of unemployment benefits between successive academic years or terms.

An individual's right to unemployment benefits is based primarily on the provision of R.C. 4141.29 which states, "[e]ach eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in sections 4141.01 to 4141.46 of the Revised Code." R.C. 4141.01 (M) states "[a]n individual is 'totally unemployed' in any week during which he performs no services and with respect to such week no remuneration is payable to him." R.C. 4141.01 (N) states "[a]n individual is 'partially unemployed' in any week if, due to involuntary loss of work, the total remuneration payable to him for such week is less than his weekly benefit amount."

In 1974 I relied most heavily on the statutory definition of "totally unemployed" in reaching the conclusion that a public school employee is entitled to receive unemployment compensation during the period of time schools are closed due to lack of funds. While it is quite clear that during such time a teacher is involuntarily unable to provide any service, the condition that a teacher receive no remuneration with respect to such period should be further clarified.

The prohibition in R.C. 4141.01 (M) regarding remuneration is that the employee may not be considered totally unemployed in any week with respect to which remuneration is payable to him. The statute is not conditioned upon the employee's receipt of payments in such week. If, therefore, the employee has received payment in advance or will be retroactively paid with respect to a particular week, he is not unemployed in such week, and is, therefore, not entitled to unemployment benefits. Thus, R.C. 4141.01 (M) and my opinion No. 74-096, *supra*, expressly preclude a double payment situation in which teachers would receive both unemployment compensation and retroactive pay for any one week. This prohibition does not, however, mean that a teacher may not receive payment during a period of unemployment for services rendered at a previous time. It is my understanding that although teachers earn their salary on a per diem basis, they receive their salary pursuant to a payment schedule incorporated in their contract. While there is considerable variety in the method of payment, there is generally a period of delay between the time the teacher has earned his salary and the time he is paid that salary. If a teacher merely receives payment in a particular week for salary earned at a previous time, such teacher is not disqualified from unemployment benefits for such week.

Your specific question is, however, whether a teacher is eligible for unemployment compensation if such teacher is paid his full contract salary before the end of the school year because the lost days are subsequently made up after the schools reopen. Reference to Ohio's unemployment laws provides only a partial answer to your question, for the factors that control the relationship between a school board and its teaching employees are, for the most part, the terms of the contract they have negotiated between themselves.

Even though a school district is ordered to close its schools temporarily due to lack of funds, the district must, pursuant to R.C. 3313.48, fulfill the required number of days in session within the balance of the school year. How the school district acquires teaching services to provide the needed makeup days is, however, a matter controlled by the rights and obligations of the school board and its teachers as they have been negotiated in the local teacher employment contracts.

It is not a matter controlled by the state unemployment compensation laws. Thus whether the board may require the teachers to provide substitute service without negotiating additional compensation or whether a school board must pay its teachers to acquire additional services for makeup days depends upon the specific terms in each local contract, not upon the state unemployment laws. In other words, the partial answer provided by the unemployment laws is, as I said above, that a teacher may not receive unemployment benefits and compensation pursuant to the employment contract for the same period. This is so regardless of when the compensation is received. Beyond that, however, the unemployment laws are silent with respect to the rights and obligations of the parties in periods after the unemployment is received.

The rights of a claimant to unemployment compensation benefits must, however, be determined exclusively under the express provisions in R.C. Chapter 4141. Granakis v. Bureau of Unemployment Compensation, 12 Ohio Misc. 86 (1967); Knowles v. Roberts, 117 N.E.2d 173 (1952). Since there is no provision in R.C. Chapter 4141 that conditions or restricts a claimant's eligibility on circumstances, rights or benefits arising upon his subsequent reemployment, the amount of compensation the teachers receive after the schools reopen has no particular bearing on the teachers right to unemployment benefits during the period of time the schools are closed, so long as none of the compensation is retroactive payment for the period unemployment benefits were claimed.

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

1. A teacher is not totally unemployed, pursuant to R.C. 4141.01 (M), in any week with respect to which remuneration has been or will be paid to him. If a teacher will be retroactively reimbursed for salary not paid during a period in which the schools are closed, such teacher is not entitled to unemployment compensation during this period. (1974 Op. Att'y Gen. No. 74-096, clarified)
2. Whether a school board must pay a teacher for makeup days after the schools reopen is not a question of state law. Rather, it is a matter to be controlled by the local contract between the school board and its teachers. The determination of this matter has no bearing on a teacher's right to unemployment benefits during the time the schools are closed, provided that such compensation does not constitute retroactive payments for the period during which unemployment benefits are claimed.