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SICK LEAVE CREDIT—PUBLIC SCHOOL TEACHER—ACCUMULATED DURING TIME TEACHER ABSENT FROM DUTY THROUGH ILLNESS — SAME AS DURING TIME WHEN TEACHER AT WORK—SECTION 486-17c GC.

## SYLLABUS:

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.

Columbus, Ohio, April 17, 1953

Hon. Hugh I. Troth, Prosecuting Attorney  
Ashland County, Ashland, Ohio

Dear Sir:

I have before me your communication submitting for my opinion, the following question:

“Under G. C. 486-17c, where a school teacher has accumulated sick leave time up to 35 work days and is sick for a period in excess of the 35 work days, does that teacher accumulate sick leave time while she is on sick leave? In other words, does that teacher get  $1\frac{1}{4}$  days sick leave time for the period she is not in school but is being paid under G. C. 486-17c?”

The pertinent portions of Section 486-17c, General Code, reads as follows:

“Each full-time employee, whose salary or wage is paid in whole or in part by the state of Ohio 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 ( $1\frac{1}{4}$ ) work days with pay, \* \* \* Unused sick leave shall be cumulative up to ninety (90) days unless more than ninety (90) days are approved by the responsible administrative officer of the employing unit. \* \* \* Provisional appointees or *those who render part-time, seasonal, intermittent, per diem, or hourly service* shall be entitled to sick leave *for the time actually worked* at the same rate as that granted full-time employees herein. \* \* \*”

(Emphasis added.)

In Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, it was held:

“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.”

A number of authorities were discussed in that opinion relative to “full time employment” or “full time employee,” and I concur in the opinion of my predecessor that in the eyes of the law a school teacher who is employed by contract to teach during the portion of the year which usually constitutes a school year, is a full time employee.

It will be noted that as to full time employees of a board of education, it is provided that each such employe is entitled “for each completed month of service to sick leave of one and one-fourth ( $1\frac{1}{4}$ ) work days with pay.” Sick leave credit may be accumulated up to 90 days, and the administrative head of the employing unit may allow even more.

The purpose and effect of a statute of this character is to permit an employee to remain away from his work a certain number of days on account of illness, and receive his pay while so prevented from working. In my opinion the fact that he is prevented by illness from working, does not prevent him from being in the service while so detained.

The statute does not assume that an employee must be injured or sick in order to acquire sick leave credit, nor does it suggest that being ill at any time separates him from service or prevents the operation of the statute.

An examination of the further provisions of Section 486-17c shows an attempt to adapt the statute to those employes who render part time, seasonal, intermittent, per diem or hourly service. Plainly, if these employees are to be entitled to sick leave, it must be calculated on a somewhat different basis. It is provided that they shall be entitled to sick leave for the *time actually worked* at the same rate as that granted full time employes herein. The words “time actually worked” do not appear in the provision relative to full time employees. I do not consider that the legislature manifested an intent to undertake to hold them to the same rule.

Accordingly, in answer to your question, it is my opinion that the sick leave credit to which a public school teacher is entitled under Section 486-17c, 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.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General