

**OPINION NO. 74-104**

**Syllabus:**

When a school district has been closed for lack of funds during the final weeks of 1974, and when funds will become available immediately after the beginning of 1975 and the school employees will receive regular pay checks on the first regular pay day in 1975, the employees will not be eligible for unemployment compensation for that portion of the regular holiday recess which is covered by the first 1975 pay check.

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, December 16, 1974

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

"We have received your Opinion No. 74-096, dated November 20, 1974, in which it was held that:

"1. 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.

"2. The board of education is not relieved of its duty to pay fringe benefits during a period when a public school is closed for lack of funds, simply because public school employees have applied for and are receiving unemployment compensation benefits.'

"However, in reviewing the above material, a related question has arisen which we feel was not answered in the above cited opinion as follows:

"When a school district is closed due to lack of funds, are employees who are receiving unemployment compensation eligible for such unemployment compensation during a period when they are not normally scheduled to work?

"For example, in a school district which has closed due to lack of funds, will an employee who is receiving unemployment compensation be eligible to receive such compensation for those days during a holiday closing or during a normal school recess when the employee is not scheduled to work?"

Certain public school districts have recently ceased operations due to lack of funds, and will not reopen until after January 1, 1975. See R.C. 3313.483; and Opinion No. 71-063, Opinions of the Attorney General for 1971. The holiday recess falls within the period when the schools will be closed. You ask whether the school employees will be eligible for unemployment compensation during the recess when they would not normally be scheduled to work.

There appears to be no disagreement with the conclusion of Opinion No. 74-096, which held that public school employees are entitled to unemployment compensation during such a forced closing,

**"\* \* \*provided they perform no service and receive no salary from the school district with respect to the period of the layoff."  
(Emphasis added.)**

I take it that it is also undisputed that the school employees will perform no services during the enforced layoff. (The skeleton staffs who do perform services necessary to maintain the schools in readiness for reopening will receive their salaries and are obviously ineligible for unemployment compensation.) But I do not think your question is quite accurate in its statement of the real issue. The issue is not whether the school employees are eligible for unemployment compensation when they are not scheduled to work during a normal school recess. The issue is whether the employees are eligible for unemployment compensation if they are to receive their regular salary in respect to such period.

My information is that funds will be available to the school districts at the beginning of 1975; that the employees will receive their regular pay checks on the first regular pay day thereafter; and that the checks will cover, to a greater or lesser extent, the holiday recess period. The extent of this coverage will depend upon the terms of the employees' contracts (R.C. 3319.08, 3319.081), and upon the pay regulations adopted by the particular board. In Opinion No. 74-082, after noting the broad discretion granted to the boards in this respect, I said:

**"\* \* \*I find no section of the Revised Code prescribing the time for payment of teachers' salaries; consequently, a board of education is free to adopt any reasonable regulations it deems advisable on the subject.  
\* \* \*"**

I conclude, therefore, that, to the extent that this first pay check in 1975 represents a school employee's regular pay for the period which includes the holiday recess, the employee will not be eligible to receive unemployment compensation. The fact that the employee does not normally perform any service during the recess is immaterial here to the extent that he may receive a regular pay check covering the period. The intent of the General Assembly to exclude an employee from unemployment benefits under such circumstances is clear from the language of R.C. 4141.29(I) which provides in part:

**"\* \* \*Benefits based on service for a public school district \* \* \*shall not be paid to any individual for any week of unemployment which begins during the period between two successive academic years or terms of the employing school district \* \* \* provided the individual was in employment with the school district \* \* \* at the termination of the first such academic year or term.  
\* \* \* However, any individual employed by a public school district \* \* \* shall be notified by April thirtieth each year if he is not to be reemployed the following academic year."**

Because of the differences in the pay period prescribed by the regulations of the various boards of education, the Administrator of the Bureau of Employment Services will have to determine in each instance, under the procedures set forth in R.C. 4141.28, 4141.29, and 4141.30(C), whether, and to what extent, a school employee is entitled to unemployment compensation.

In specific answer to your question it is my opinion, and you are so informed, that, when a school district has been closed for lack of funds during the final weeks of 1974, and when funds will become available immediately after the beginning of 1975 and the school employees will receive regular pay checks on the first regular pay day in 1975, the employees will not be eligible for unemployment compensation for that portion of the regular holiday recess in respect to which they receive remuneration in the first 1975 pay check.