

**OPINION 65-57****Syllabus:**

Days on which sick leave, under Section 143.29, Revised Code, was used are to be included in computing the forty-hour standard work week for nonteaching school employees under Section 3319.086, Revised Code.

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**To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio**  
**By: William B. Saxbe, Attorney General, April 8, 1965**

Your request for my opinion reads in pertinent part as follows:

"This office is addressing this letter to you on behalf of the Canfield Local Board of Education which is desirous of obtaining an opinion on the interpretation of Section 3319.086, Revised Code, as it relates to Section 143.29, Revised Code, for a full time non-teaching employee. The material part of the question is as follows:-

"If a person works Monday, Tuesday, Wednesday, off on sick leave Thursday and Friday, then is at work on Saturday and off on Sunday, what constitutes the 40-hour week? Is the person entitled to the overtime pay on Saturday above his regular pay, or would he only be working 32 hours as a work week and not entitled to extra overtime pay?"

I assume that your request concerns an employee who was hired to work eight hours daily for the five-day period, Monday through Friday, and for whom, therefore, work on Saturday would be in addition to a regular 40-hour work week.

Section 143.29, Revised Code, states:

"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. 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. The responsible administrative officer of the employing unit may require the employee to furnish a satisfactory affidavit that his absence was caused by illness due to any of the causes mentioned in this section. This section shall be uniformly administered as to employees in each agency of the state government.

"This section does not interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employees for unused sick leave."

Section 3319.086, Revised Code, states:

"In all school districts, forty hours shall be the standard work week for all non-teaching school employees. Such employees shall not be required to work on days declared by the employing board of education as school holidays unless failure to work on such holidays would impair the public service. Where such employees are required by their responsible administrative superiors to work in excess of forty hours in any seven day period or to work on days declared by the employing board of education to be school holidays, they shall be compensated for such time worked at not less than their regular rate of pay, or be granted compensatory time off. As used in this section, 'non-teaching school employees' does not include any person employed in the public schools of the state in an administrative or supervisory capacity in connection with the services rendered by non-teaching school employees.

"Nothing in this section shall prevent the school district from establishing a work week of less than forty hours."

Section 143.29, Revised Code, creates a right separate and distinct from that created by Section 3319.086, Revised Code; that is, the former section establishes the right of certain

public employees to receive pay for periods during which they were absent from work for reasons relating to illness, while the latter section establishes the right of nonteaching school employees to receive additional compensation or time off for time worked in excess of forty hours in a seven-day period.

Section 3319.086, Revised Code, contains no language expressly carving out an exception from the accrual of overtime rights in those instances where sick leave has been used in a seven-day period. Indeed, there is no reference in Section 3319.086, Revised Code, to Section 143.29, Revised Code. I can see, therefore, no justification for implying such an exception.

Further, in Opinion No. 2496, Opinions of the Attorney General for 1953, page 151, it was held:

"The sick leave credit to which a public school teacher is entitled under Section 486-17c, General Code (Section 143.29, Revised 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 work."

(Matter in parenthesis.)

In that opinion of my predecessor I concur, and it would be anomalous to hold that using accumulated sick leave bars a right to overtime benefits, while days on which such sick leave was used may be used in computing a completed month of service for accruing additional sick leave.

Accordingly, it is my opinion that days on which sick leave, under Section 143.29, Revised Code, was used are to be included in computing the forty-hour standard work week for nonteaching school employees under Section 3319.086, Revised Code.