

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-199 was overruled by
1972 Op. Att'y Gen. No. 72-013.

OPINION 65-199**Syllabus:**

1. The amendment to Ohio Revised Code Section 325.19 which takes effect October 30, 1965, and states that no vacation shall be carried over for more than two years applies only to vacation earned after October 30, 1965.

2. Payment for unused vacation may be made only at the time of separation from service.

To: Richard E. Parrott, Union County Pros. Atty., Marysville, Ohio
By: William B. Saxbe, Attorney General, November 15, 1965

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

"I wish to request a formal opinion concerning the following matter:

"The amendment to Ohio Revised Code Section 325.19 which takes effect October 30, 1965, States 'No vacation leave shall be carried over for more than two (2) years.'

"Our County has employees with more than two years accrued vacation leave at the present time. In one case vacation leave accrued is over thirty (30) weeks. My questions are as follows:

"(1) After October 30, 1965, will these employees lose vacation leave accrued over the two year limit?

"(2) May an employee be paid for vacation leave accrued over the two year limitation without separating from his employment?"

The applicable part of Section 325.19, Revised Code, states:

"Each full-time employee in the several offices and departments of the county service, including full-time hourly-rate employees, after service of one year, shall be entitled during each year thereafter, to two calendar weeks, excluding legal holidays, of vacation leave with full pay. Employees having * * * ten or more years of county service are entitled, during each year thereafter, to three calendar weeks * * * of vacation leave with full pay. * * * Employees having twenty-five or more years of county service are entitled, during each year thereafter, to four calendar weeks of vacation leave with full pay. Such vacation leave shall

accrue to the employee upon each successive annual recurrence of the anniversary date of his employment; provided, the anniversary date may be deferred because of periods of time which the employee is not in active pay status. Days specified as holidays in section 143.12 of the Revised Code shall not be charged to an employee's vacation leave. Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment; provided, the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than two years. An employee shall be entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the two years immediately preceding the last anniversary date of employment."

It is necessary to examine whether this law is to be retroactive or retrospective in its application. The Ohio Constitution, Article II, Section 28, forbids the legislature from passing a retroactive law. Your attention is directed to Opinion No. 867, Opinions of the Attorney General for 1964, page 2-74, in that opinion I cited with approval the case of Barbieri v. Morris, 315 S.W., 2d 711. The Barbieri case, *supra*, provides an excellent discussion of retroactive or retrospective laws; the Court said at page 714:

"'Retroactive' or 'retrospective' laws are generally defined, from a legal viewpoint, as those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past. Lucas v. Murphy, 348 Mo. 1078, 156 S.W. 2d, 686, 690. But it has been held specifically that 'a statute is not retrospective because it merely relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its actions are drawn from a time antecedent to its passage, or because it fixed the status of a person for the purpose of its operation.' State ex rel. Sweezer v. Green, 360 Mo. 1249, 232 S.W. 2d, 897, 900, 24 A.L.R. 2d, 340. It is said to be retroactive 'only when it is applied to rights acquired prior to its enactment.' 82 C.J.S. Statutes, Section 412. See also State ex rel. Ross to Use of Drainage Dist. No. 8 of Pemiscot County v. General American Life Ins. Co., 336 Mo. 829, 85 S.W. 2d, 68; 74; Dye v. School District No. 32 of Pulaski County, 355 Mo. 231, 195 S.W. 2d, 874, 879; 16 A C.J.S. Constitutional Law Section 414. * * *"

Before the enactment of Amended Substitute House Bill No. 70, which amended Section 325.19, supra, there was no statutory limit on the amount of vacation county employees could accrue.

The question to be decided is whether this two year accumulation of vacation proviso applies to vacation earned before the effective date of the statute as amended.

The date an employee began his service is called his anniversary date. An employee earns vacation only upon the attainment of that anniversary date one year later and each year thereafter. In the case of an employee who has not taken his vacation, that vacation was earned by him and is due to him. There was no limitation upon the amount he could accrue.

It is clear that the intent is not to allow an employee to carry his vacation over for more than two years. But I am of the opinion that the vacation earned prior to the effective date of the act is not affected by this provision. It is only vacation which will be earned after October 30, 1965, which will not be allowed to be carried over more than two years. I base my opinion upon the fact that there was never any limitation placed upon that vacation earned prior to the act in question; therefore, it is due the employee and the fact that a retroactive interpretation of this section would place a limitation on an accrued right of the employees.

In reference to your second question, I find that the only provision made for payment for unused vacation is at the time of separation. Since the employee may be paid only when statutory authority is granted to pay him, it is my opinion that payment may be made only at the time of separation.

Accordingly, you are advised as follows:

1. The amendment to Ohio Revised Code Section 325.19 which takes effect October 30, 1965, and states that no vacation shall be carried over for more than two years applies only to vacation earned after October 30, 1965.
2. Payment for unused vacation may be made only at the time of separation from service.