

OPINION NO. 77-029

Syllabus:

Under the terms of R.C. 124.38, which provides for accrual of sick leave on the basis of hours of service, sick leave is to accrue to the employees enumerated therein on the basis of hours in active pay status. (Branch 3, Syllabus, 1976 Op. Att'y Gen. No. 76-001 modified.)

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, June 3, 1977

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

"In computing accumulated sick leave for a county employee pursuant to Section 124.38, does the phrase 'hours of service' mean the hours actually worked and logged by the employee or does the phrase 'hours of service' refer to an employee's hours in active pay status?"

As noted in your request, in discussing the basis upon which overtime pay is to be computed in 1976 Op. Att'y Gen. No. 76-001, I had occasion to note the distinction between R.C. 325.19, which provides for accrual of vacation leave on the basis of biweekly pay periods and R.C. 124.38 which provides for accrual of sick leave on the basis of each completed eighty hours of service.

Prior to amendment by Am. H.B. No. 93, effective May 17, 1967, R.C. 143.29, which later became R.C. 124.38, provided sick leave for the employees enumerated therein on the basis of one and one-fourth work days for each completed month of service. Am. Sub. H.B. No. 93, however, made a number of changes in the civil service law and amended R.C. 143.29 to read, in pertinent part as follows:

"Each employee, whose salary or wage is paid in whole or in part by the state, and each employee in the various offices of the county service, and each employee of any board of education, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. . . ."
(Emphasis added)

As discussed in the analysis of Am. Sub. H.B. No. 93 prepared by the Legislative Services Commission, the amendment proposed therein altered the basis upon which sick leave would be computed, so that leave would accrue on the basis of each eighty hours of service rather than on the basis of monthly employment. However, no intent to alter the sick leave available to full-time employees was evident. In fact, as noted in the Legislative Service Commission analysis of Am. Sub. H.B. No. 93, "A full-time employee currently may earn 15 days sick leave under present law and this feature is not changed."

It appears, therefore, that in using the term "hours of service" in R.C. 143.29, now R.C. 124.38, the General Assembly intended that sick leave accrue on the basis of hours in active pay status. There is nothing in the history of Am. Sub. H.B. No. 93 which suggests an intention that the sick leave available to full-time employees was to change. Had the General Assembly intended that sick leave be computed on the basis of hours actually worked - which would have resulted in a change in the sick leave available to full-time employees - it could easily have done so in express terms.

The provisions of R.C. 143.29 have been amended in several respects not pertinent to your inquiry since 1967, most recently by Am. H.B. No. 513, effective August 9, 1974, which renumbered R.C. 143.29 as R.C. 124.38 and added employees in the service of civil service townships to the enumerated employees. In its current version, R.C. 124.38 in pertinent part, provides:

"Each employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county, municipal and civil service township service, and each employee of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. . . ." (Emphasis added)

Based upon the foregoing, it is my opinion, and you are so advised, that under the terms of R.C. 124.38, which provides for accrual of sick leave on the basis of hours of service, sick leave is to accrue to the employees enumerated therein on the basis of hours in active pay status. (Branch 3, Syllabus, 1976 Op. Att'y Gen. No. 76-001 modified.)