

1846

TEACHER NOT ENTITLED TO SICK LEAVE FOR PERIOD DURING WHICH SAID TEACHER WAS IN MILITARY SERVICE—§143.29.,R. C.

SYLLABUS:

Section 143.29, Revised Code, does not authorize the allowance of sick leave to a school teacher for a period during which said teacher was in the military service and did not complete any months of military service in the employment of the board of education.

Columbus, Ohio, November 23, 1960

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A teacher in the Solon Board of Education of this county was a full time regularly employed teacher for that Board of Education when and before he was inducted into the military service of the United States. He served his proper time in said military forces and has promptly returned to his employment as a regular full time teacher of said Board of Education, and has filed his military honorable discharge papers with the teachers retirement board, showing the time he spent in the military service.

“This teacher is now asking for sick leave for the time spent in the military service.

“Inasmuch as this question has not been passed upon by the courts or your office so far as we know, we ask you for an opinion as to whether or not this teacher is entitled to the sick leave he desires.”

Section 143.29, Revised Code, entitled “Sick Leave,” reads as follows:

“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."

In Opinion No. 3575, Opinions of the Attorney General for 1954, page 75, one of my predecessors determined that a school teacher under contract with a board of education comes within the purview of the sick leave statute, Section 143.29, *supra*. The first paragraph of the syllabus of that opinion reads:

"1. A teacher employed in the public schools under a contract for one or more years, or under a continuing contract, is a full time employee within the purview of Section 143.20, Revised Code, (486-17c, G. C.), relating to sick leave, and notwithstanding his active service may be performed during only a portion of the year, is entitled to sick leave credit for each completed month of service during the calendar year, which is concluded in his contract of employment. Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, approved."

Said Opinion No. 3575 dealt with a teacher who was under contract with the board of education and who actually completed months of service. The instant case deals with allowance of sick leave for period during which the teacher was not under contract with a board of education and did not complete any months of service as a teacher. Clearly there is no authority under Section 143.29, *supra*, for allowance of sick leave other

than for each completed month of service in the employment concerned; and, as to a teacher, in employment under a contract with a board of education.

Regarding credit for military service, I note that under Section 3307.02, Revised Code (a member of the state teachers retirement system is entitled to prior service credit for military service under certain conditions. Also, under Section 3317.06, Revised Code, a teacher is entitled to certain salary increments for each year of service in the armed forces of the United States. Neither of these sections, however, contains any authority for a board of education to grant sick leave to a teacher for time spent in the military service; and if it had been intended that such be authorized under Section 143.29, *supra*, it would appear that the legislature would have so provided.

Answering your specific question, therefore, it is my opinion and you are so advised that Section 143.29, Revised Code, does not authorize the allowance of sick leave to a school teacher for a period during which said teacher was in the military service and did not complete any months of service in the employment of the board of education.

Respectfully,

MARK McELROY

Attorney General