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1. ABSENCE — SICK LEAVE — “PUBLIC AGENCY” — WORDS INCLUDE STATE, SEVERAL COUNTIES, ALL MUNICIPALITIES AND ALL BOARDS OF EDUCATION—SECTION 143.29 RC.
2. “EACH AGENCY OF THE STATE GOVERNMENT” — WORDS INCLUDE VARIOUS DEPARTMENTS AND AGENCIES OF STATE GOVERNMENT—SEVERAL POLITICAL SUBDIVISIONS MENTIONED IN SECTION 143.29 RC NOT INCLUDED.
3. ABSENCE OF PUBLIC EMPLOYEE DUE TO ILLNESS—EMPLOYEE’S IMMEDIATE FAMILY—SCOPE OF RELATIONSHIP AS TO IMMEDIATE FAMILY—DETERMINATION—WITHIN SOUND DISCRETION OF RESPONSIBLE ADMINISTRATIVE OFFICER—RULING MAY NOT BE DISCRIMINATORY.
4. PERSON EMPLOYED IN ANY OF VARIOUS OFFICES OF COUNTY SERVICE—ENTITLED TO BENEFIT OF SICK LEAVE CREDIT PREVIOUSLY ACCUMULATED IN ANY PUBLIC AGENCY NAMED IN SECTION.

## SYLLABUS:

1. The words “public agency” used in Section 143.29 of the Revised Code include the state, the several counties, all municipalities and all boards of education.
2. The words “each agency of the state government,” as used in Section 143.29, Revised Code, include the various departments and agencies of the state government, but do not include the several political subdivisions therein mentioned.
3. The determination of whether the absence of a public employe is due to illness or death in the employe’s “immediate family,” including the determination of whether the relationship is sufficiently close as to come within the scope of being in the “immediate family,” is a matter to be determined by the responsible administrative officer of the particular public agency acting within his sound discretion and without discrimination between employes.
4. Under the provisions of Section 143.29, Revised Code, a person coming into the employment of any of the various offices of the county service, is entitled to the benefit of sick leave credit previously accumulated by him in any of the public agencies named in such section.

Columbus, Ohio, March 25, 1954

Hon. John Rossetti, Prosecuting Attorney  
Stark County, Canton, Ohio

Dear Sir:

I have before me your communication in which you request the interpretation of Section 143.29, Revised Code, commonly referred to as the "sick leave law." Among other matters, you request a discussion as to the meaning of certain phrases used in the law, such as "public agency," "state government," and "immediate family." You also raise questions as to the transfer of sick leave credit from one public agency to another.

Section 143.29, Revised Code, which was formerly Section 486-17c, General Code, was originally enacted in 1947, and is found in 122 Ohio Laws, page 368. As then enacted, its scope was limited strictly to employees of the State.

In 1949 the section was amended, the purposes of the amendment being clearly stated in the title, to-wit:

"An Act to amend Section 486-17c of the General Code, relative to the uniform operation of sick leave in all governmental agencies."

As codified, and appearing as Section 143.29 of the Revised Code, this section 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.” (Emphasis added.)

It will be observed that in its present provision the section purports to deal with employes of the State, the counties, municipalities and boards of education.

1. As to the meaning of the words, “public agency,” it seems unnecessary to devote time to an analysis of this phrase, since it is very clear that the legislature regarded the state, a county, a municipal corporation, and a board of education as being public agencies, within the purview of this section and both the title above quoted and the text appear to bear out this conclusion.

2. The words “state government” appear only at the end of the first paragraph of the section, where it is provided that “this section shall be uniformly administered as to employes in each agency of the *state government.*” This sentence was not found in the original enactment in 1947, but was introduced in the amendment of 1949. It appears to me that as used, it can only refer to employes in the various state departments. As already indicated, the words “public agency” were clearly intended to include the State and the various political subdivisions named, and while the meaning and purpose of this new sentence relating to “each agency of the state government” appears to be somewhat unnecessary and meaningless, I can see no construction to be placed upon it except to consider that the legislature had in mind the administration of the law as to employes in the various departments or agencies of the state government. It is to be observed that the statute gives the administrative head certain discretion both in the use of sick leave and in extending it beyond ninety days, and it seems reasonable to conclude that the state departments are to be

held to a uniform administration even though the counties, municipalities and school boards might indulge in varying practices.

3. As to the meaning of the words "immediate family," it is my judgment that neither this act nor any other law of the State or any judicial expressions can be adduced which would enable me to give a positive definition of this phrase.

Recourse to general treatises such as *Corpus Juris Secundum* convinces one that the word "family" is capable of an almost unlimited variety of meanings. It is stated in 35 *Corpus Juris Secundum*, page 737, that the word is one of great flexibility and is capable of many different meanings, according to the connection in which it is used. The same writer goes on to say:

"In its primary sense the term embraces a collection of persons as a single group, with one head, living together, a unit of permanent and domestic character, under one roof, and has been most frequently defined as meaning, substantially, a collection, or the collective body, of persons living in one house, or under one head or manager, although this definition has been criticized. More specifically, the word has been defined as a collective body of persons, consisting of parents or children, or other relatives, domestics, or servants, residing together in one house or upon the same premises; a collective body of persons, who form one household, under one head and one domestic government, and who have reciprocal natural or moral duties to support and care for each other; \* \* \*."

Again it is said at page 741:

"In a more restricted sense, the term has been defined as a group of persons consisting of father, mother, and children; a collection of persons having association by reason of marriage, including only parents and their children, whether living together or not; \* \* \*."

Numerous cases are referred to as illustrating these various definitions. Referring to the subject of "family" in Volume 16, "Words and Phrases," we find some forty pages of cases indicating an almost infinite variety of meanings which are ascribed to the word under different circumstances.

Coming to the subject of "immediate family," I find in Volume 20, of *Words and Phrases*, page 102, et seq., several cases arising under the charter of a beneficial association authorizing a member to designate as a

recipient of the benefits payable upon his death to a person in his "immediate family." In one case, to-wit, *Dalton v. Knights of Columbus*, 30 Conn., 212, it was said:

"\* \* \* The words "immediate family" is used in this connection to indicate a group of persons of which the insured is one connected as one family and from which is excluded any member who has become separated from the group as constituting one household, and 'immediate family' certainly includes all persons bound together by the ties of relationship and parents and children living together as members of one household under one head."

To like effect, see *Benevolent Legion v. McGinnis*, 59 Ohio St., 531; *Wegener v. Wegener*, 101 Ohio St., 22.

It may be said that in many of the definitions of a "family" emphasis is placed on the idea that it includes those closely related *who live in the same household*. In applying that restriction to the sick leave statute that we are considering, it seems to me obvious that it would be out of accord with the spirit of the law to insist that only persons living in the same household are to be regarded as in the immediate family. We must also consider that an employe's father or mother, brother or sister or son or daughter might be living in the same city or town with the employe in question, although not under his roof, or might be living at considerable distance, and it would seem to me harsh to hold that an employe might not use his accumulated "sick leave" for a day or more under this statute by reason of the critical illness or death or funeral of one of these. On the other hand, it might be necessary, in order to prevent abuse of the system, to put some limit on the extent of the leave.

Taken all in all, I do not consider the words "immediate family" capable of an exact legal definition which is to be used under all circumstances. It appears to me that a certain discretion must be left to the "responsible administrative officer of the employing unit," in determining under what precise circumstance, in case of critical illness or death in his family, the employe is justified in absenting himself and for how long. The statute provides that the employe is to use sick leave upon the approval of such officer, and furthermore, he is given discretion to increase the limit of 90 days sick leave credit if he considers it proper so to do. There is the further provision in the law that the administrative officer may require

the employe to furnish a "satisfactory" affidavit that his absence was caused by illness due to any of the causes mentioned in the section.

My conclusion therefore as to the meaning of the words "immediate family" in Section 143.29, Revised Code, is that the law furnishes no precise definition, and that it must be left to the sound discretion of the administrative head to establish and administer a rule which, however, should apply fairly and equally to all employes under his control. To prevent abuse, the scope of the "immediate family" for the purpose of the rule, should be limited to those persons coming within the circle of a close family relationship. A further discretion in the application of the rule in particular cases is plainly indicated by the wording of the law.

4. Relative to the transfer of sick leave credit which follows an employe when he comes into the service of the county after service in some other public agency, I direct attention to the provision of Section 143.29, supra, reading as follows :

"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."

In view of the manifest meaning of "public agency," which we have already discussed, it would appear that an employe who has either left the county service and later returned thereto, or has come into the county service after accumulating sick leave credit in service with any of the public agencies named in the statute, is entitled to have the benefit of such accumulated credit, and that the county must bear whatever burden is entailed in paying his salary or wage when he is absent on sick leave credit so accumulated.

If this appears to be an unfair burden, it must be remembered that a county is a creature of the statute, organized by the General Assembly pursuant to the authority of Section 1 of Article X of the Constitution. And it is well settled that as such it is charged with such duties and endowed with such powers as the General Assembly has seen fit to prescribe.

In 11 Ohio Jurisprudence, page 244, speaking of a county as an agency of the state, it is said :

"\* \* \* As such agency, the county is a creature in the hands of its creator, subject to be molded and fashioned as the ever-

varying exigencies of the state may require. Except as restricted by the state Constitution, the power of the legislature, through which the sovereignty of the state is represented and exercised, over counties, is supreme, and that body may exercise plenary power with reference to county affairs, county property, and county funds. Counties, therefore, possess only such powers and privileges as may be delegated to, or conferred upon, them by statute. \* \* \*

Accordingly, it is quite within the power of the legislature to impose upon a county whatever of burden is involved in the statute under consideration in according to its employes the benefit of sick leave accumulated by them while in the service of other public agencies.

It is therefore my opinion, and you are advised:

1. The words "public agency" used in Section 143.29 of the Revised Code include the state, the several counties, all municipalities and all boards of education.

2. The words "each agency of the state government," as used in Section 143.29, Revised Code, include the various departments and agencies of the state government, but do not include the several political subdivisions therein mentioned.

3. The determination of whether the absence of a public employe is due to illness or death in the employe's "immediate family," including the determination of whether the relationship is sufficiently close as to come within the scope of being in the "immediate family," is a matter to be determined by the responsible administrative officer of the particular public agency acting within his sound discretion and without discrimination between employes.

4. Under the provisions of Section 143.29, Revised Code, a person coming into the employment of any of the various offices of the county service, is entitled to the benefit of sick leave credit previously accumulated by him in any of the public agencies named in such section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General