

Note from the Attorney General's Office:

1954 Op. Att'y Gen. No. 54-3950 was overruled by 1970 Op. Att'y Gen. No. 70-021.

3950

FIRE DEPARTMENT—MUNICIPAL—DIVIDED INTO TWO PLATOONS—EACH PLATOON WITHIN A SINGLE DAY ON DUTY TWENTY-FOUR CONSECUTIVE HOURS—SERVICE CONSTITUTES SINGLE “WORK DAY”—FULL TIME EMPLOYEES IN MUNICIPAL SERVICE ENTITLED FOR EACH COMPLETED MONTH OF SERVICE TO SICK LEAVE—ONE AND ONE-FOURTH WORK DAYS WITH PAY—SECTIONS 143.29, 4115.02 RC.

SYLLABUS:

Where under the provisions of Section 4115.02, Revised Code, Section 17-1a, General Code, a municipal fire department is divided into two platoons, each platoon being on duty twenty-four consecutive hours within a single day, such twenty-four hours service constitutes a single “work day” within the purview of Section 143.29, Revised Code, Section 486-17c, General Code, which provides that full-time employes in the municipal service “shall be entitled for each completed month of service to sick leave of one and one-fourth work days with pay.”

Columbus, Ohio, June 14, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“It appears that a state wide problem has arisen because of the fact that, in so many cities, the fire departments are organized according to the ‘platoon system’ which requires the firemen to work twenty-four hours, and then be off twenty-four hours, with a ‘Kelly day’ thrown in about every two weeks.

“Under the platoon system, a fireman’s work day is twenty-four hours.

“The sick leave statute provides for an allowance of one and one-quarter work days to be allowed for each completed month of service with the city, which can be accumulated up to ninety work days. (Section 143.29 R.C.)

“The question that arises is stated somewhat as follows:

“In computing sick leave days for firemen working on the

'platoon system,' shall a work day for firemen be considered as a twenty-four hour day, and in the allowance of sick leave credits and accumulations, shall the firemen be allowed sick leave credit and accumulation of one and one-quarter work days of twenty-four hours for each completed month's service with the City, (which would be thirty hours) or should they be allowed credit and accumulation of one and one-quarter eight hour days for each completed month of service, as are other employees of the city?

"It can be readily seen that by allowing the firemen one and one-quarter work days of twenty-four hours, where the work days come only every other day, a fireman who has accumulated ninety days sick leave would be allowed over six months off with pay, whereas an employee of another department with ninety days sick leave accumulation would be allowed only a little over three months leave with pay.

"This question has arisen in several parts of the State and I am asking your opinion as to the application of the present sick leave statute to fire departments working on the 'platoon system.' "

Section 143.29, Revised Code, Section 486-17c, General Code, reads in pertinent part:

"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. * * *"

It is now accepted law, I believe, that despite the home rule powers given to municipalities by Article XVIII of the Constitution, it is within the power of the General Assembly to enact laws regulating the management of fire departments within municipalities. *State, ex rel. Strain v. Houston*, 138 Ohio St., 203; *Cincinnati v. Gamble*, 138 Ohio St., 221; *State, ex rel. Arey v. Sherrill*, 142 Ohio St., 574. Thus it has been concluded that as to firemen, a municipality may not reduce the allowance of sick leave prescribed by Section 486-17c, General Code. Opinion No. 266, Opinions of the Attorney General for 1951, page 107.

The "platoon system" referred to in your letter is provided by Section 4115.02, Revised Code, Section 17-1a, General Code, which reads:

"The chief of the fire department of each city shall divide the uniform force into not less than two platoons, and where the uniform force is so divided into two platoons the said chief shall keep a platoon of the uniform force on duty twenty-four consecutive hours, after which the platoon serving twenty-four hours shall be allowed to remain off duty for at least twenty-four consecutive hours, except in cases of extraordinary emergency. Each individual member of the platoons in addition to receiving a minimum of twenty-four hours off duty in each period of forty-eight hours shall receive an additional period of twenty-four consecutive hours off duty in each period of fourteen days so that no individual member shall be on duty more than a total of one hundred forty-four hours in any period of fourteen days. The chief shall arrange the schedule of working hours to comply with this section. In each city all employees of the fire department shall be given not less than two weeks' leave of absence annually, with full pay. This section in so far as it relates to off duty periods does not apply to any city that adopts the eight-hour regulation for its fire department, but the provisions relating to the two weeks' leave of absence do apply."

Section 143.29, Revised Code, it will be noted, authorizes the use of sick leave only to the extent accumulated. Each "full-time employee" is credited with sick leave at the rate of one and one-fourth work days for "each completed month of service."

There could be no question, I believe, as to the fact that a fireman working under the "platoon system" is a full-time employee. For a discussion as to the meaning of a "full-time employee" see Opinion No. 1605, Opinions of the Attorney General for 1950, page 173, and Opinion No. 3575, Opinions of the Attorney General for 1954, issued March 10, 1954.

Being a full-time employee, it is equally clear that he accumulates a credit of one and one-fourth "work days" sick leave by the passage of each month of such employment.

Thus, the basic question presented by your request is whether the tour of duty of twenty-four consecutive hours under the provisions of Section 4115.02, Revised Code, is a single work day within the purview of Section 143.29, Revised Code, or whether absence from duty for such twenty-four hours should be considered as absence for something more than a single work day.

A "work day" is not defined by statute. It would appear that the General Assembly intended by this term to exclude from consideration those days in which an employee would not have worked regardless of illness, i.e., Sundays, holidays, vacations, etc., and to include each *day* when except for illness he would have worked. As heretofore noted, the aggregate of credits for sick leave is computed upon the basis of a "completed month of service" without regard to the number of "work days" in such month, so long as the employee is a "full-time employee." The use of sick leave is debited against the employee upon the basis of "work days." Neither the credit nor the debit side of the ledger are computed upon the basis of "work hours."

As you point out in your letter, if the full twenty-four hour tour of duty is considered as a single work day, this will result in a fireman under the "platoon system" proportionately receiving more sick leave credit than those persons employed on an eight hour day basis.

Whether the General Assembly foresaw such result from the actual language employed in the statute and whether such result is fair or unfair, is a matter which cannot be considered in the process of statutory interpretation unless the language actually employed is itself ambiguous. As stated in the case of *Slingluff v. Weaver*, 66 Ohio St., 21, "the intent of the law-makers is to be sought first of all in the language employed." Or, as stated in the case of *State, ex rel. Nimberger v. Bushwell*, 95 Ohio St., 203:

"4. When the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment and not by judicial construction."

On the debit side I find no more basis upon which I could break down "work days" into "work hours" than on the credit side I find any basis to break down "each completed month of service" into "work days" or "work hours." If an absolute proportionate equalization of sick leave credit may only result by using "work hours" on *both* sides of the ledger, and if such absolute proportionate equalization be desirable, such is a matter for legislative consideration. I believe it clear, however, that such

result may not be accomplished by any logical interpretation of the existing language of Section 143.29, Revised Code.

In specific answer to your question, it is my opinion that where under the provisions of Section 4115.02, Revised Code, Section 17-1a, General Code, a municipal fire department is divided into two platoons, each platoon being on duty twenty-four consecutive hours within a single day, such twenty-four hours service constitutes a single "work day" within the purview of Section 143.29, Revised Code, Section 486-17c, General Code, which provides that full-time employees in the municipal service "shall be entitled for each completed month of service to sick leave of one and one-fourth work days with pay."

Respectfully,

C. WILLIAM O'NEILL

Attorney General