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## VACATION—LEAVE OF ABSENCE—SICK LEAVE—COUNTY EMPLOYEES—STATE EMPLOYEES—REASONABLE TIME—DISCRETION—HIRING OFFICIAL.

## SYLLABUS:

1. County employes on a monthly basis are entitled to a reasonable leave of absence for vacation or a sick leave if the contract of hire so provides either expressly or by necessary reasonable implication.

2. Section 154-20, General Code, granting leaves of absence to state employes may be used as a guide to determine what a reasonable time may be in view of the fact that no specific statute covering the subject may be found.

3. If provisions are made for leave for vacation or sickness, it is discretionary with the hiring official whether one period be granted for either vacation or sickness or two periods be granted, one for vacation and one for sickness.

COLUMBUS, OHIO, June 9, 1939.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR: I am in receipt of your recent request for my opinion in answer to the following questions:

“1. Is a county employee, on a monthly salary, entitled to a vacation with pay?

2. If they are entitled to a vacation with pay, what is the length or duration of the time they should be allowed?

3. Is a county employee, on a monthly salary, entitled to sick leave with pay?

4. If they are entitled to a sick leave with pay, what is the length of the period per year, which they should be so paid?

5. If they are entitled to both vacation with pay, and sick leave with pay, should the periods of both be added, or should the sick leave be subtracted from the vacation period?

6. If such county employee is not entitled to a vacation with pay, and the elected official signs the monthly payroll stating that he has worked, can wages paid out be recovered from said county official?

7. If such county employee is not entitled to sick leave with pay, and the elected county official signs the monthly payroll stating that he has worked, can wages paid out be recovered from said county official?”

Turning first to the question of vacation, I respectfully refer you

to Opinions of the Attorney General for 1928, Vol. IV, page 2820, the syllabus of which reads as follows:

“County commissioners may lawfully allow their employes a reasonable leave of absence during their term of employment with full pay, whether such employes are paid on a weekly or monthly basis, or upon a per diem basis, providing the contracts of employment with such employes so provide, either expressly or by necessary reasonable implication.”

The above opinion was rendered upon the fact that Sections 2410 and 2413, General Code, do not limit or restrict the boards of county commisioners in any way in their contracts of hire with employes. Section 2410, *supra*, reads as follows:

“The board may employ a superintendent, and such watchman, janitors and other employes as it deems necessary for the care and custody of the court house, jail, and other county buildings, and of bridges, and other property under its jurisdiction and control.”

Section 2413, *supra*, reads as follows:

“The board of county commissioners shall fix the compensation of all persons appointed or employed under the provisions of the preceding sections, which, with their reasonable expenses shall be paid from the county treasury upon the allowance of the board. No provisions of law requiring a certificate that the money therefor is in the treasury shall apply to the appointment or employment of such persons.”

Turning next to Section 2981, General Code, said section reads as follows:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties

approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office."

This section, relating to employes of public elective officials, does not limit or restrict the official in his contract of hire in any greater degree than does Section 2413, *supra*, relating to county commissioners.

It is, therefore, my opinion that the opinion above mentioned is controlling whether the employe is hired by a board of county commissioners or by an elective county official.

Section 154-20, General Code, reads in part as follows :

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Each employe in the several departments shall be entitled during each calendar year to fourteen days leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended. No employe in the several departments, employed at a fixed compensation, shall be paid for any extra services, unless expressly authorized by law."

This section grants employes of the State fourteen days leave of absence. It is my opinion that this statute would serve as a guide which may be considered as reasonable in view of the fact that there is no specific statute governing the matter at hand.

In answering your further question relating to sick leave, it is assumed first that by the term "sick leave" you mean time off with pay for actual sickness and not a period which accrues per year to the employes even if sickness does not occur. It will be noted that Section 2981, *supra*, does not limit or restrict public officials with respect to the term of the contract of those employed by virtue of this act. The entire matter of the terms of the contract of employment and the fixing of the employes, compensation is left to the discretion of the public official and no specific provision of law qualifying or limiting the discretion of such official is to be found except as might be done by civil service regulations.

Where discretion unlimited and unqualified is vested in public officers, it will not be interfered with so long as the action taken is not unlawful, arbitrary, unreasonable or of such character as to constitute an abuse of discretion. In the case of *State, ex rel. Maxwell, Prosecuting Attorney, vs. Schneider, et al.*, 103 O. S., 492, it is said by Mathias, J. :

"The action of a public officer or of a board within the limitation of the jurisdiction conferred by law is not only presumed to be valid but it is also presumed to be in good faith and in the exercise of sound judgment. Before a court will take

cognizance of a claim that the action of such officer or board is unlawful, arbitrary, unreasonable or of such character as to constitute an abuse of discretion, facts must be set forth which would warrant such conclusion."

Accordingly, there is nothing which would prevent public officers, in the absence of statutes to the contrary, from providing under contract of hire that employes may have a reasonable time off for sick leave. If an express contract were made or if the right to sick leave may be impliedly included within the terms of the contract by reason of a custom existing to grant such sick leave or by reason of rules that may have been promulgated by the officials applicable to the subject, it does not, in my mind, amount to an abuse of discretion on the part of such official and is, therefore, lawful.

From the above it will be seen that it is within the discretion of the public officer to grant sick leaves. It is also within his discretion to determine the length of time for such leave providing the period granted is of reasonable duration. What is a reasonable period must be left entirely up to the hiring official for there is no provision in the law to which we may refer as being analogous.

Turning to the question of whether the employe may receive both sick leave and vacation with pay, it is apparent, from the foregoing, that the granting of either privilege depends upon the discretion of the employer official. It would follow then that it would be entirely within the discretion of such employer official to grant sick leave in addition to a vacation period or to grant only one period of leave which could be either used as a vacation or sick leave.

As a matter of sound public policy, leaves of absence for vacation or sickness are desirable and in all instances should be read into the contract of hire, if not expressly, then by reference to the general policy followed in private business and in state and federal governments.

This being the case, it is unnecessary to consider your last two questions for the reasons above given.

In conclusion, I am of the opinion that the hiring board or official may grant county employes a reasonable period of absence for vacation with pay and may also grant a reasonable period of leave for sickness where the contract of hire expressly or by reasonable implication so provides. Section 154-20, General Code, granting leaves of absence to state employes, may be used as a guide to determine what constitutes a reasonable period and as to sick leave, there being no law directly or indirectly pertaining to the matter, if such be allowed, the period so granted is entirely within the discretion of the employer official to determine what is a reasonable period.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*