

Note from the Attorney General's Office:

1974 Op. Att'y Gen. No. 74-107 was overruled in part by
2002 Op. Att'y Gen. No. 2002-034.

OPINION NO. 74-107

Syllabus:

1. The board of township trustees of a civil service township is required by R.C. 124.38 to credit an employee under the jurisdiction of its civil service commission with his unused sick leave accumulated in the public service, up to the maximum accumulation of sick leave permitted by such township.

2. A board of township trustees may not grant to its employees who are not under the jurisdiction of a township civil service commission, credit for unused sick leave accumulated in the public service.

To: Ronald J. Kane, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, December 31, 1974

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

"The Trustees of Mantua Township, Portage County, Ohio, have asked this office to request your opinion regarding the following:

"The Trustees are desirous of hiring as road superintendent a man who will shortly retire as an employee of the State Highway Department. This person has accumulated approximately 900 hours of sick leave which he has asked to be transferred to the township as cumulative sick leave under Section 143.29, Revised Code, as amended effective 12/13/73. This section of the Revised Code of Ohio fails to mention employees of townships and our question is, Can the Township of Mantua legally transfer cumulative sick leave and pay for same out of the township general fund under the above quoted section or any other section of the Revised Code of Ohio?"

R.C. 124.38, which provides for sick leave benefits for certain public employees, reads in part as follows:

"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.

"* * * Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of

one hour for every one hour of absence from previously scheduled work. The previously accumulated sick leave of an employee who has been separated from the public service, shall be placed to his credit upon his re-employment in the public service, provided that such re-employment takes place within ten years of the date on which the employee was last terminated from public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers.
* * *."

Thus, an employee who transfers from one public agency to another is to be credited with the unused balance of his accumulated sick leave. The proper disposition of your question, therefore, depends in part upon the interpretation of the term "public agency" as it appears in R.C. 124.38.

The term has been construed to include only certain types of public agencies, specifically, those enumerated in the first sentence of the statute. My predecessor, in Opinion No. 1302, Opinions of the Attorney General for 1960, p. 298, in concluding that the provision does not apply to an employee of a city or general health district who transfers to the state department of health, stated the reason for such an interpretation at 300 as follows:

"The implication that follows from this direct statement is that the legislature intended not to include more than the enumerated employing units within the meaning of the term 'public agency.'

"To follow this rule of statutory construction in this situation seems to be based upon good reason. Otherwise a public agency that was not bound to accumulate sick leave time in the manner provided by Section 143.29 [R.C. 124.38], Revised Code, could allow an employee to accumulate sick leave at more than the rate provided for by that statute. Another public agency would then be bound to accept that accumulated leave time when an employee transfers to it from such an agency. In my opinion this would result in inequities not intended by the legislature."

See, also Opinion No. 71-055, Opinions of the Attorney General for 1971; Opinion No. 3643, p. 128, Opinions of the Attorney General for 1954.

The list of public agencies set forth in R.C. 124.38 is not, however, as restrictive as it was at the time the foregoing Opinions were written. In enacting Amended House Bill No. 513 (Eff. 8-09-74), the General Assembly has included a reference to those persons in the "civil service township service." This term appears to cover those persons under the jurisdiction of a township civil service commission. Under the rationale set forth in the aforementioned Opinions, such persons are covered by R.C. 124.38, and must be credited with their unused sick leave benefits accumulated during other public service.

R.C. 124.01, which sets forth the definitions of various terms found in R.C. Chapter 124, provides in part as follows:

"(G) 'Civil service township' means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under division (B) of Section 124.40 of the Revised Code."

Although your letter does not indicate whether or not Mantua qualifies as a civil service township, such a determination must be made before the plan therein described is implemented. A township which has a population of ten thousand or more persons and which has a police or fire department of ten or more full time employees, may become a civil service township at the discretion of the board of township trustees. Such a board may, pursuant to R.C. 124.40(B), appoint three persons who shall constitute the township civil service commission. Once created, the commission exercises the same powers and duties as a municipal civil service commission and is authorized to exercise the same supervisory powers as those conferred upon the state personnel board of review under the provisions of R.C. 124.40(A). It should be noted, however, that the jurisdiction of a civil service township civil service commission is limited to employes of the township police or fire department having ten or more full-time paid employees, under R.C. 124.40(B).

In summary, if a township has established a civil service commission, the provisions of R.C. 124.38 apply to such of its employees as are under the jurisdiction of the civil service commission (that is, members of its police or fire department). Therefore, the township is required to credit such an employee with the unused accumulated sick leave acquired in the public service, "up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers." R.C. 124.38.

The foregoing discussion merely states what the board of trustees of a township is required to do. It does not answer the question whether the board of township trustees is, in such a situation, permitted to credit such an employee with unused accumulated sick leave if it is not required to do so.

It is well settled in Ohio law that boards of township trustees have only such powers as are expressly granted by statute, or necessarily implied therefrom. Opinion No. 74-024, Opinions of the Attorney General for 1974; Opinion No. 73-090, Opinions of the Attorney General for 1973.

I am unable to find any statute which either expressly or impliedly enables a township which is not a "civil service township" to credit a township employee who has transferred from another form of public service with any portion of his unused accumulated sick leave. Therefore, if Mantua Township is not a civil service township, it may not grant such credit. Nor does the board of trustees of a civil service township have authority to grant such credit to an employee who is not in the "civil service township service," that is, not an employee of its police or fire department.

In specific answer to your question, it is my opinion and you are so advised that:

1. The board of township trustees of a civil service township is required by R.C. 124.38 to credit an employee under the jurisdiction of its civil service commission with his unused sick leave accumulated in the public service, up to the maximum accumulation of sick leave permitted by such township.

2. A board of township trustees may not grant to its employees who are not under the jurisdiction of a township civil service commission, credit for unused sick leave accumulated in the public service.