

OPINION NO. 92-015**Syllabus:**

Part-time service with the state or any political subdivision of the state is to be included in calculating the minimum ten years of service necessary for a county employee to receive a cash payment for unused sick leave at the time of retirement in accordance with R.C. 124.39(B).

To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Lee Fisher, Attorney General, May 12, 1992

You have asked whether part-time employment as a county deputy sheriff is included in calculating whether a county employee has accumulated at least ten years of service with the state or its political subdivisions for purposes of receiving payment for unused sick leave upon retirement. R.C. 124.39(B), which governs payment for unused sick leave, reads in part: "Except as provided in division (C) of this section,¹ an employee of a political subdivision covered by [R.C. 124.38 or

¹ R.C. 124.39(C), in part, allows a political subdivision to adopt a sick leave payment policy for its employees that varies in one of four ways from the policy established by R.C. 124.39(B). Further, R.C. 124.39(C) allows individual county appointing authorities to modify the policy established by R.C. 124.39(B) or a policy adopted by the county under R.C. 124.39(C), but only in the circumstances set forth in R.C. 124.39(C).

3319.141] may elect, at the time of retirement from active service with the political subdivision, and with ten or more *years of service* with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of his accrued but unused sick leave credit." (Emphasis and footnote added.)

Eligibility to Participate in Sick Leave Conversion Plan

R.C. 124.39(B) establishes several criteria which must be met in order to be eligible to participate in the sick leave conversion plan described therein. First, one must be an employee of a political subdivision covered by R.C. 124.38 or R.C. 3319.141, pursuant to which various public employees accumulate sick leave. Since R.C. 124.38(A) entitles employees of a county to receive sick leave benefits, county employees, including a county deputy sheriff, meet the first criterion for eligibility. The second criterion established by R.C. 124.39(B) is that the employee be retiring from active service with the employing political subdivision.² Finally, R.C. 124.39(B) requires that an employee have, at the time of retirement, "ten or more years of service with the state, any political subdivisions, or any combination thereof." Concerning this final criterion, you specifically ask whether the minimum ten years of service which an employee must have in order to be eligible for conversion of his unused sick leave under R.C. 124.39(B) includes part-time service as well as full-time service.

Part-Time Service May Be Included in Determining Years of Service

The only limitation set forth in R.C. 124.39(B) on the types of service which may be included in calculating whether an employee has the requisite ten or more years of service is that such service be "with the state, any political subdivisions, or any combination thereof." R.C. 124.39 does not otherwise restrict how such service may be accumulated, nor does it specify the means of calculating a year of service for purposes of division (B). Cf. R.C. 325.19(A) (in calculating a full-time county employee's service time for vacation leave purposes, "[o]ne year of service shall be computed on the basis of twenty-six biweekly pay periods"). In this regard, R.C. 124.38, pursuant to which county employees are entitled to receive sick leave benefits, grants each employee sick leave benefits based solely on the number of hours of completed service; after completing eighty hours of service, whether on a full-time or part-time basis, each employee is entitled to receive four and six-tenths hours of sick leave with pay. Thus, both full-time employees and part-time employees are entitled to receive sick leave benefits under R.C. 124.38.

Since county employees accumulate sick leave benefits under R.C. 124.38 while rendering either full-time service or part-time service, the statutes should be read *in pari materia*, and, thus, R.C. 124.39(B) should include both full-time and part-time service. Had the General Assembly intended that the minimum years of service required by R.C. 124.39(B) be determined solely on the basis of years of full-time service, it could easily have expressed that intention, having made distinctions between full-time and part-time county employment in other contexts. Cf. R.C. 325.19 (vacation leave benefits for county employees, distinguishing between full-time and part-time employment).

Conclusion

Based upon the foregoing, it is my opinion, and you are advised that part-time service with the state or any political subdivision of the state is to be included in calculating the minimum ten years of service necessary for a county employee to receive a cash payment for unused sick leave at the time of retirement in accordance with R.C. 124.39(B).

² As used in R.C. 124.39, "retirement" refers to disability or service retirement under a state or municipal retirement system in this state. R.C. 124.39. See generally 1980 Op. Att'y Gen. No. 80-057 (discussing county employees' membership in, and retirement from, the Public Employees Retirement System, R.C. Chapter 145).