

OPINION NO. 75-025

Syllabus:

1. Under R.C. 121.161 and R.C. 9.44, prior service as an elected county official shall be credited to a state employee in computing the amount of his vacation leave. 1974 Op. Att'y Gen. No. 74-085 approved and followed.

2. Under R.C. 121.161 and R.C. 9.44, prior service as an elected state officer in any branch of state service shall be

credited to a state employee in computing the amount of his vacation leave.

To: Thomas E. Ferguson, Auditor of State, State of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, March 31, 1975

I have your request for an opinion posing two questions as follows:

"1. Under Section 121.161, R.C., in light of Opinion No. 74-085, Opinions of the Attorney General for 1974, is prior service as an elected county official to be credited toward the eligibility of a state employee for vacation benefits?

"2. Under Section 121.161, R.C., and in view of the aforementioned Attorney General's Opinion No. 74-085, is prior service as an elected state officer, either legislative or executive, to be credited toward the eligibility of a state employee for vacation benefits?"

In 1974 Op. Att'y Gen. No. 74-085 the question was whether, under R.C. 325.19 which prescribes the vacation rights of employees in the county service, a county welfare employee, who had formerly served as county treasurer, should be credited with his years of service as a county officer in computing the amount of vacation leave to which he is now entitled as a county employee. The opinion noted that a public officer, unlike a public employee, never accrues vacation leave. On the other hand both the officer and the employee are in the "public service". Consequently, while an officer accrues no vacation leave while in office, his years of service as an officer can be used in computing the amount of vacation leave which he is later entitled to accrue as an employee. The opinion said:

"* * *Your second question requires an interpretation of the term, 'county service', as it is used in R.C. 325.19. If service as a county officer, specifically county treasurer, qualifies as 'county service' under R.C. 329.19, one who has sixteen years of such service would have been entitled to three weeks of vacation leave pursuant to that Section.

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"The question, then, is whether 'county service', as used in R.C. 325.19 which governs the vacation rights of employees, includes service as an officer of the county.

"Although it is true that there is no specific statutory definition of 'county service' and that R.C. 325.19 has specific application only to county employees, Chapter 124 of the Revised Code which

deals with the civil service system of the State defines 'civil service' as including 'all offices and positions of trust and employment in the service of the state and the counties, * * *.' R.C. 124.01(A). I think it clear, therefore, that both the officers of a county and the employees thereof are included in the 'county service'.
* * * (Emphasis added.)

The opinion further pointed out that state employees and county employees now receive exactly the same vacation rights, the former under R.C. 121.161, and the latter under R.C. 325.19, supra. Therefore, the reasoning of the opinion applies with the same effect to state employees, who were formerly state legislative or executive officers, as it does to county employees who were formerly county officers. It applies with equal force to a state employee who was formerly an elected county officer. Under R.C. 9.44 an employee of the state is entitled to credit for prior service with any political subdivision of the state in the computation of the vacation leave to which he is entitled as an employee. That Section reads in pertinent part as follows:

"A person employed, other than as an elective officer, by the state or any political subdivision of the state earning vacation credits currently, is entitled to have his prior service with any of these employers counted as service with the state or any political subdivision of the state for the purpose of computing the amount of his vacation leave.
* * * (Emphasis added.)

See also 1974 Op. Att'y Gen. No. 74-088.

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

1. Under R.C. 121.161 and R.C. 9.44, prior service as an elected county official shall be credited to a state employee in computing the amount of his vacation leave. 1974 Op. Att'y Gen. No. 74-085 approved and followed.

2. Under R.C. 121.161 and R.C. 9.44, prior service as an elected state officer in any branch of state service shall be credited to a state employee in computing the amount of his vacation leave.