

OPINION NO. 70-012

Syllabus:

1. County employees with twenty or more years of county service are entitled to four weeks' vacation during each year, as of November 19, 1969.

2. County employees, for the year 1970, are entitled to those holidays which are defined as legal holidays in Section 1.14 of the Revised Code, as such Section is presently in effect.

3. As of January 1, 1971, county employees will be entitled to the holidays specified in Section 1.14 of the Revised Code, as amended by Amended Substitute House Bill No. 5.

To: The Ohio Senate, Columbus, Ohio
By: Paul W. Brown, Attorney General, February 6, 1970

You have asked, by Resolution (Senate Resolution No. 134 adopted January 14, 1970), for my opinion relative to holidays to which county employees will be entitled as the result of the combined effects of the enactment of Amended Substitute House Bill No. 5 and Amended House Bill No. 268 by the General Assembly, both of which Bills amended Section 325.19, Revised Code, if such section is not further amended.

Amended Substitute House Bill No. 5, in addition to the Code Section in question, amended other Code Sections, notably Section 1.14, Revised Code. The amendments to Section 1.14, supra, establish certain new holidays (by combining certain pre-existing holidays) on dates different than the pre-existing holidays. The primary purpose of the Bill was to provide for uniform annual observances of certain legal holidays on Mondays in conformity with new federal holidays. In other words, the amended Section 1.14, supra, provides for four three-day weekend holidays during the year. By virtue of Section 3 of Amended Substitute House Bill No. 5, the provisions for the new holidays are not effective until January 1, 1971.

Amended House Bill No. 268 amended only Section 325.19, supra, and, according to the heading of that Act, the purpose of the Act was to provide for different vacation benefits for county employees. Prior to the enactment of Amended House Bill No. 268, Section 325.19, supra, read, in part, as follows:

"Employees having twenty-five or more years of county service are entitled, during each year thereafter, to four calendar weeks of vacation leave with full pay."

Amended House Bill No. 268 changed the term of county service required to entitle a county employee to four weeks' vacation from twenty-five years to twenty years. In addition, however, two other amendments to Section 325.19, supra, were contained in Amended House Bill No. 268. One such amendment deleted references to Lincoln's Birthday, Washington's Birthday and Veterans' Day, and

substituted therefor Washington-Lincoln Day, Columbus Day and Veterans' Day.

The third amendment to Section 325.19, supra, was the insertion of the following provision:

"Holidays shall occur on the days specified in Section 1.14 of the Revised Code."

The problem arises since Amended House Bill No. 268 did not contain a proviso delaying its effective date until January 1, 1971, since it was the apparent intent of the General Assembly that the primary purpose of the enactment, the reduction of term of service for four weeks' vacation for county employees, become effective in due course. The changes enacted by Amended House Bill No. 268 became effective November 19, 1969.

Were it not for the inclusion, in Amended House Bill No. 268, of the provision that "holidays shall occur on the days specified in Section 1.14 of the Revised Code" we would be faced with a substantial dilemma. By virtue of the inclusion of that statement, however, much doubt as to the intent of the General Assembly with respect to holidays for county employees during calendar year 1970, has been removed.

Initially, there is no question but that county employees having twenty or more years of county service are now entitled to four calendar weeks of vacation leave with full pay. Amended House Bill No. 268 as enacted has become effective as law of the State of Ohio as of November 19, 1969, and, therefore, has vitality. The change in the names of holidays contained in Amended House Bill No. 268 is inconsistent with the presently specified holidays contained in Section 1.14, supra (since the changes to that section do not become effective until January 1, 1971, by virtue of the enactment of Amended Substitute House Bill No. 5). The inconsistency between the names of holidays and the specification of holidays and the dates upon which they shall fall between the amended Section 325.19, supra, and the current Section 1.14, supra (and the requirement that holidays shall occur on the days specified in Section 1.14 of the Revised Code), creates an apparent dilemma which must be resolved in favor of Section 1.14, supra. A "Washington-Lincoln Day" does not now exist and will not exist until January 1, 1971 and thereafter. I can only conclude, however, since some meaning must be given to the action of the General Assembly, that the General Assembly intended the phrase "Washington-Lincoln Day" to refer to Washington's Birthday and Lincoln's Birthday as such days are presently provided for in Section 1.14, supra. The same is true of Columbus Day and Veterans' Day which are presently provided for in Section 1.14, supra.

Authority for the foregoing can be found in Sutherland Statutory Construction, Section 4925 (3d Ed.), in cases where "it is obvious that the word used in the act is the result of clerical error, or mistake, where the substitution will make the act sensible, or give it force and effect, or make it rational * * *." The result is admittedly somewhat strained and somewhat less than satisfactory, however. It would be far better were the issue presented to an appropriate court for determination or made the subject of curative legislation. I strongly recommend that the General Assembly consider legislation to cure this obvious error during its current session.

Since the operative provision of Amended House Bill No. 268 with respect to the holidays for county employees is that provision which states that such holidays shall occur on the days specified in Section 1.14, supra, I conclude and you are so advised that the relationship between Amended Substitute House Bill No. 5 and Amended House Bill No. 268 as both Bills were enacted, with respect to county employees, is as follows:

1. County employees with twenty or more years of county service are entitled to four weeks' vacation during each year, as of November 19, 1969.

2. County employees, for the year 1970, are entitled to those holidays which are defined as legal holidays in Section 1.14 of the Revised Code, as such Section is presently in effect.

3. As of January 1, 1971, county employees will be entitled to the holidays specified in Section 1.14 of the Revised Code, as amended by Amended Substitute House Bill No. 5.