

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-145 was overruled by
1974 Op. Att'y Gen. No. 74-085.

OPINION NO. 65-145

Syllabus:

1. A State employee who formerly served as an officer of the State may not be given credit for that period spent as an officer in determining length of service for purposes of qualifying for three weeks of paid vacation leave.

2. Prior service time with the Korean Conflict Compensation Fund may be considered as service with the State within the meaning of Section 121.161 Revised Code and as such may be considered in determining the right of a State employee to three weeks vacation.

3. Prior service time with the Ohio Turnpike Commission or Ohio Bridge Commission is not properly considered as service with the State under the provisions of Section 121.161, Revised Code, and such service should not be considered in determining eligibility for three weeks paid vacation leave.

To: Wayne Ward, Director, Department of Personnel, Columbus, Ohio
By: William B. Saxbe, Attorney General, August 11, 1965

I have before me your request for my opinion which reads in pertinent part:

"First, may a State employee who was formerly an officer be given credit for the period of service as an officer in determining service eligibility for three weeks of vacation? Second, may service as an employee with the Korean Conflict Compensation Fund, the Ohio Turnpike Commission and the Ohio Bridge Commission be considered in determining service eligibility for three weeks of vacation?"

Section 121.161, Revised Code, to which you refer in your request, reads as follows:

"Each full-time state employee, including full-time hourly-rate employees, after service of one year with the state, is entitled, during each year thereafter, to two calendar weeks, excluding legal holidays, of vacation leave with full pay. Employees having fifteen or more years of service with the state are entitled, during each year thereafter, to three calendar weeks, excluding legal holidays, or vacation leave with full pay. Two calendar weeks of leave with pay will have been earned and will be due an employee upon attainment of the first anniversary of employment and annually thereafter, and three calendar weeks of leave with pay will have been earned and will be due an employee upon attainment of the fifteenth anniversary of employment and annually thereafter. Upon separation from state service, except for cause, an employee shall be entitled to compensation for the pro-rated portion of any earned but unused vacation leave to his credit at time of separation.

"In special and meritorious cases where to so limit the annual leave during any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended.

"Employees working on an hourly basis shall be entitled to eight hours of holiday pay for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day of each year, if they are regular employees with at least six month's full-time state service immediately prior to the month when such holiday occurs, except that interruption of service due to illness or injury caused or induced by

the actual performance of official duties and not by an employee's negligence shall not affect such employee's right to holiday pay.

"In case of the death of a state employee, the unused vacation leave and unpaid overtime to the credit of any such employee, shall be paid in accordance with section 2113.04 of the Revised Code, or to his estate."

In answer to your first question, Section 121.16, Revised Code, provides for vacation benefits to employees of the State of Ohio. This section makes no mention of vacation benefits for officers of the State. This question is resolved by Opinion No. 3548, Opinions of the Attorney General for 1963, in which it is stated, inter alia, in paragraph two of the syllabus that:

"2. A state officer, such as the director of Finance appointed pursuant to Section 121.03, Revised Code, is not a state employee within the purview of Section 121.161, Revised Code, and not subject to the vacation provisions of that statute; * * *"
(Emphasis added)

I concur with the logic of Opinion No. 3548, supra, and believe that it is determinative of your first question. It is logical to conclude that since a state officer is not a state employee in contemplation of law, (Section 121.161 Revised Code) such service as a state officer cannot be a credit to service as a state employee when determining the amount of vacation available.

Accordingly, I am of the opinion that a state employee who formerly served as an officer of the State may not be given credit for that period spent as an officer in determining length of service for purposes of qualifying for three weeks of paid vacation leave.

Your second question in effect asks whether or not prior service as an employee of the Korean Conflict Compensation Fund, the Ohio Turnpike Commission, or the Ohio Bridge Commission constitutes service with the state within the purview of Section 121.161, Revised Code, for the purpose of determining eligibility for three weeks paid vacation leave.

Section 2 (d), Article VIII, Ohio Constitution, provides that the Korean Conflict Fund shall be administered by the Commissioners of the Sinking Fund who shall also have the power to appoint employees and fix their compensation. Section 129.01, Revised Code states that the Board of Commissioners of the Sinking Fund shall be composed of the Auditor of State, Secretary of State, and Attorney General.

The Board's duties as set forth in Section 129.04, Revised Code, are:

"When due, the board of commissioners of the sinking fund shall pay the interest on the bonded debt of the state, the certificates of bonded debt, and at all times preserve the good faith and credit of the state."

The Korean Conflict Compensation Fund was administered by the Commissioners of the Sinking Fund as a part of its duties. It seems clear that these duties, as set forth in Section 129.04, supra, are an integral function in the administration of State government.

Furthermore, the Korean Conflict Compensation Fund was financed by the issuance of bonds backed by the good faith and credit of the State of Ohio; and such bonds were to be retired by revenues derived from the levy of a state tax on property. Those monies thereby obtained for the administration of the fund and compensation of employees of the fund are clearly State funds.

In light of the foregoing, it is my opinion that employees of the Korean Conflict Compensation were employees of an integral organ of the State of Ohio and were compensated from funds of the State of Ohio. Therefore, such employees were in service with the State within the provisions of Section 121.161, supra, and that service time may be included in the determination of the right to three weeks of paid vacation leave.

The Ohio Turnpike Commission was created by Section 5537.02, Revised Code. This commission has characteristics of a dual or hybrid existence in that it shows traits both of a private corporation and an organ of the State of Ohio. It is created by statute, the Commissioners are appointed by the Governor, and its purposes and scope of activities are outlined in Chapter 5537, Revised Code. This would indicate that the Turnpike Commission is an organ of the State of Ohio. On the other hand, Section 5537.02, supra, also makes the Commission "a body both corporate and politic." (emphasis added) The same section provides that the Commission shall not be subject to sovereign immunity. Any lawsuit to which the Commission becomes a party must be conducted in its own name and the State of Ohio assumes no liability whatever, Hoffmeyer v. Ohio Turnpike Commission, 12 O.O. (2d) 436. The Commission is empowered by Section 5537.04, Revised Code, to issue bonds which are redeemable only out of revenues derived from the operation of the Ohio Turnpike. These bonds are not backed in any by the good faith and credit of the State of Ohio. Furthermore, all employees are hired by the Turnpike Commission and compensated solely from revenue funds of the commission.

It appears that although the Ohio Turnpike is an arm of the State of Ohio insofar as it is statutory in origin and created for a public purpose, in its operation and financial structure it is an autonomous entity severed from the State of Ohio. In Hoffmeyer v. Ohio Turnpike Commission, supra, The Court of Common Pleas of Cuyahoga County in its opinion concurred with this notion when it said at page 437, "The Words used in the sections (5537.01 et seq.) give rise to the clear inference that the Legislature did not regard the Turnpike Commission as a political arm of the state." From the foregoing it appears that employees of this commission can not properly be regarded as in the service of the State, especially when it is clear that no portion of those employees' compensation is derived from Funds of the State of Ohio. Therefore, I am of the opinion that prior service time in the employ of the Ohio Turnpike Commission may not be considered in determining the right of a state employee to three weeks paid vacation leave.

The statutory authorization and organization of the Ohio Bridge Commission is closely parallel to that of the Ohio Turnpike Com-

mission. Like the Turnpike Commission it is created by statute and its functions outlined therein, Section 5593.02 et seq., Revised Code. It may make such rules and regulations for its internal government as it deems necessary. The Commission makes all contracts in its own name; the State of Ohio does not become a party thereto. The Commission may hire those employees it deems necessary and fix their compensation. The Bridge Commission is financed by the issuance of bonds, which like those of the Ohio Turnpike Commission, are not backed by the good faith and credit of the State of Ohio. All expenditures, salaries, and other compensation must be paid from the proceeds of such bond issues and toll revenues.

The Ohio Bridge Commission is also, it seems to me, a quasi-public body which has attributes and characteristics of both an arm of the State and a private corporation. Like the Turnpike Commission, the Ohio Bridge Commission is autonomous in its internal operation and the manner in which it finances its activities. The same rationale applies in determining whether or not its employees should be regarded as employees in the service of the State within the scope of Section 121.161, supra.

Since the Ohio Bridge Commission is an entity unto itself for financial and operational purposes and since its employees are not compensated from State funds, it is, therefore, my opinion that prior service in the employ of the Bridge Commission is not service with the State of Ohio within the meaning of Section 121.161, supra, and should not be considered in determining the eligibility of a State employee for three weeks paid vacation.

In summary, it is my opinion and you are advised:

1. A State employee who formerly served as an officer of the State may not be given credit for that period spent as an officer in determining length of service for purposes of qualifying for three weeks of paid vacation leave.

2. Prior service time with the Korean Conflict Compensation Fund may be considered as service with the State within the meaning of Section 121.161 Revised Code and as such may be considered in determining the right of a State employee to three weeks vacation.

3. Prior service time with the Ohio Turnpike Commission or Ohio Bridge Commission is not properly considered as service with the State under the provisions of Section 121.161, Revised Code, and such service should not be considered in determining eligibility for three weeks paid vacation leave.