

OPINION NO. 75-015

Syllabus:

A board of education may not adopt a rule or regulation requiring a physician's statement to justify the use of sick leave by an employee of that board, since such a rule would conflict with the provisions of R.C. 3319.141 which do not require such a doctor's statement.

To: William Meikle, Mercer County Pros. Atty., Celina, Ohio
By: William J. Brown, Attorney General, March 17, 1975

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

"Your formal opinion is hereby requested on the legality of the sick leave policy of the Celina City Schools as stated in the Master Agreement, Section 2, Paragraph E, which empowers the superintendent with the discretion to require a physician's statement of illness to justify the use of sick leave."

That part of the master agreement to which you refer reads as follows:

"* * * Employees may use sick leave upon approval of the building principal (or his designated representative, in case of his absence) for absence due to illness, injury, pregnancy (in accordance with provisions of Maternity leave, Paragraph XIII-A-1) or exposure to contagious disease which could be communicated to students and/or employees.

"Sick leave may also be used when illness or injury occurs within the household or the immediate family of the employees. The superintendent may require a doctor's statement of illness and/or need."
(Emphasis added.)

The sick leave rights of an employee of a board of education are now covered by R.C. 3319.141 which was originally enacted in 1970 and provides in pertinent part:

"Each person who is employed by any board of education in this state shall be entitled to fifteen days sick leave with pay, for each year under contract, which shall be credited at the rate of one and one-fourth days per month. Teachers and nonteaching school employees, upon approval of the responsible administrative officers of the school district, may use sick leave for absence due to personal illness, pregnancy, injury, or death in the employee's immediate family. * * * A board of education

shall require a teacher or non-teaching school employee to furnish a written, signed statement on forms prescribed by such board to justify the use of sick leave. If medical attention is required, the employee's statement shall list the name and address of the attending physician and the dates when he was consulted. * * * Falsification of a statement is grounds for suspension or termination of employment * * *."
(Emphasis added.)

Prior to the enactment of the above section, the sick leave rights of all public employees, including board of education employees, were governed by the provisions of R.C. 143.29 [now R.C. 124.38], which at that time read in part as follows:

"* * *The responsible administrative authority or personnel officer of the employing unit may require the employee to furnish a satisfactory affidavit, or a certificate from a licensed physician, as to the nature of his illness or other acceptable reason for his absence as provided in this section. * * *"
(Emphasis added.)

In 1969 Op. Att'y Gen. No. 69-164, my predecessor set forth the requirements for a "satisfactory affidavit" within the meaning of R.C. 143.29. The syllabus of that opinion reads:

"A 'satisfactory affidavit', as the phrase is used in Section 143.29, Revised Code, as amended, requires a written or printed statement under oath administered by a notary public pursuant to Section 147.07, Revised Code, containing sufficient facts so that the appointing authority is satisfied that the use of sick leave is justified."

One year after the issuance of the above quoted opinion, the legislature amended R.C. 143.29 and enacted R.C. 3319.141. The amended R.C. 143.29 read in pertinent part:

"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 service and municipal 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. Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to personal illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness, injury, or death in the employee's immediate family. * * * The appointing authority of each employing unit shall require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician

shall be required to justify the use of sick leave."
(Emphasis added.)

It is obvious that the General Assembly, by amending R.C. 143.29 and by enacting R.C. 3319.141, intended to relieve all employees from the necessity of providing a sworn affidavit of the reason for use of sick leave. It is also obvious that the General Assembly intended to relieve board of education employees of the requirement of a physician's certificate, although this was retained for other employees. Both the new section and the amendment of the old were effected by a single Act, Amended H. B. No. 1008. 133 Ohio Laws 2884-2887. If the General Assembly had intended to continue the requirement of a doctor's certificate for board of education employees it would certainly have used the same language in both sections.

Furthermore, in 1973 Op. Att'y Gen. No. 73-129, I held that a board of education may not, pursuant to its general regulatory power under R.C. 3313.20, adopt a rule denying school personnel the authority to inflict corporal punishment which was specifically granted to them under R.C. 3319.41. In that opinion, the following statement was made.

"It follows from the wording of these two provisions that for the board of education to adopt a rule under R.C. 3313.20 which prohibits the use of corporal punishment allowed under R.C. 3319.41 would be an abuse of discretion, for such a rule would conflict with the statute. It has frequently been held that a board of education has a wide discretion to adopt such rules and regulations as it deems necessary for the conduct of the schools. Greco v. Roper, 145 Ohio St. 243, 249 (1945); Opinion No. 71-024, Opinions of the Attorney General for 1971; Opinion No. 71-026, Opinions of the Attorney General for 1971. Specific statutory limitations on the board's authority must not, however, be exceeded. Where, for instance, a board of education adopted a rule requiring its employees in the classified service to retire at sixty-five the Court held the rule arbitrary and unjustified in view of a Section of the General Code fixing seventy as the age for mandatory retirement. Verberg v. Board of Education, 135 Ohio St. 246 (1939)."

Here, the rule making power of the board of education similarly is limited by the expressed intent of the legislature. The adoption of a rule requiring a physician's certificate to justify the use of sick leave conflicts with the language of R.C. 3319.141 and is thus beyond the powers of the board.

In specific answer to your question it is my opinion, and you are so advised, that a board of education may not adopt a rule or regulation requiring a physician's statement to justify the use of sick leave by an employee of that board, since such a rule would conflict with the provisions of R.C. 3319.141 which do not require such a doctor's statement.