

OPINION NO. 93-040**Syllabus:**

In the absence of a collective bargaining agreement varying the minimum service credit provisions of R.C. 9.44, where a township has adopted a vacation leave policy for its employees based upon service with the township, R.C. 9.44 requires that, in computing the amount of vacation leave to which such employees are entitled, such employees be given credit for prior service with any township.

To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion on the following question: "If a non-civil service township has adopted a policy which provides that employees accumulate vacation leave based on years of service with the township, does R.C. 9.44 mandate that employees be credited with years of prior service with a different township?"¹

Vacation Leave for Township Employees

Vacation benefits for township employees are not governed by statute. Rather, the board of township trustees, pursuant to its authority to fix the compensation of various township employees, *see, e.g.*, R.C. 511.10, is authorized to provide vacation leave as a fringe benefit, if, and to the extent, the trustees so desire. *See generally* 1981 Op. Att'y Gen. No. 81-061 (authority of township trustees to provide fringe benefits for township employees). The board's authority to prescribe fringe benefits, including vacation leave, for township employees is, however, subject to any statutory provisions limiting that authority. *See id.*

Prior Service Credit under R.C. 9.44

The township about which you ask has adopted a vacation leave policy under which the amount of leave a township employee receives is based upon the amount of time the employee has served with the township. Your question concerns the authority of the board of township trustees, in adopting a vacation leave policy for township employees, to vary the service credit provisions of R.C. 9.44, which states, in part:

(A) *Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision² of the state, earning vacation credits currently, is entitled to have his prior service with*

¹ Your request refers to a non-civil service township. The term "civil service township," as used in R.C. Chapter 124, is defined in R.C. 124.01(G), as meaning, "any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under [R.C. 124.40(B)]." In the context of your question, however, whether or not a township is a civil service township appears to be of no significance. This opinion will, therefore, use the term township, without further designation.

² *See generally* 1981 Op. Att'y Gen. No. 81-011 (syllabus, paragraph one) (for purposes of Ohio Const. art. II, §29, a township is a political subdivision).

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. The anniversary date of his employment for the purpose of computing the amount of his vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.

(B) *To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:*

(1) A county, the person shall have only his prior service with a county counted;

(2) A municipal corporation, the person shall have only his prior service within that municipal corporation counted; and

(3) *A township, the person shall have only his prior service with a township counted.*

(C) An employee who has retired in accordance with the provisions of any retirement plan offered by the state and who is employed by the state or any political subdivision of the state on or after June 24, 1987, shall not have his prior service with the state or any political subdivision of the state counted for the purpose of computing vacation leave. (Emphasis and footnote added.)

Thus, R.C. 9.44(A) entitles a township employee, who was initially employed by a township prior to July 5, 1987, and who is currently earning vacation leave credits, to receive credit for prior service with the state or *any political subdivision*, for purposes of determining the amount of vacation leave to which he is entitled in his current township employment. 1989 Op. Att'y Gen. No. 89-096.

Pursuant to R.C. 9.44(B)(3), however, a different policy applies to a person initially employed by a township on or after July 5, 1987, who "shall have only his prior service with *a township counted*" (emphasis added). Under R.C. 9.44(B)(3), therefore, such a township employee is entitled to receive credit for prior service with *any* township, but not for service with the state or any other subdivision. *See generally* Op. No. 89-096 at 2-468 ("[u]nder the statute, a person who is initially employed by a county on or after July 5, 1987, shall have prior service with *all* counties counted as service for purposes of computing vacation leave, and an analogous situation results for a person initially employed by a *township* on or after July 5, 1987"(emphasis added)). If the statute were intended to confine the person's credit only to prior service with that particular township, it undoubtedly would have repeated the different language applied to municipalities in the preceding division, which limits credit to the person's "prior service within *that* municipal corporation." R.C. 9.44(B)(2) (emphasis added). Therefore, under both R.C. 9.44(A) and (B), a township employee is entitled to receive credit for prior service with any township for purposes of computing the amount of vacation leave to which he is entitled in his current employment.

Township May Not Reduce Service Credit Minimums of R.C. 9.44

As concluded in 1990 Op. Att'y Gen. No. 90-104, syllabus, paragraph one, with respect to the authority of a municipality to vary the service credit provisions of R.C. 9.44:

In computing the amount of vacation leave of municipal employees, all municipalities, statutory and charter, must provide credit for prior service at the *minimum levels established in R.C. 9.44*, except those municipalities which have entered collective bargaining agreements pursuant to R.C. Chapter 4117 that specifically exclude rights accrued under R.C. 9.44. (Emphasis added.)

Thus, Op. No. 90-104 characterized the service credit provisions of R.C. 9.44 as establishing minimum benefits that may not be reduced by a municipality, whether under its power to establish its employees' compensation or under its powers of home rule, although such provisions are subject to change pursuant to a collective bargaining agreement entered into under R.C. Chapter 4117.

The same analysis applies to the authority of a township to vary the prior service credit provisions of R.C. 9.44 applicable to township employees. In the absence of a collective bargaining agreement entered into under R.C. Chapter 4117 that expressly changes the service credit provisions of R.C. 9.44, a board of township trustees may not, as part of its authority to fix the compensation of township employees, reduce the minimum service credit provisions of R.C. 9.44; similarly, the home rule authority of a township that has adopted a limited form of self-government under R.C. Chapter 504 does not include the power to reduce the prior service benefits to which its employees are entitled by R.C. 9.44.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, in the absence of a collective bargaining agreement varying the minimum service credit provisions of R.C. 9.44, where a township has adopted a vacation leave policy for its employees based upon service with the township, R.C. 9.44 requires that, in computing the amount of vacation leave to which such employees are entitled, such employees be given credit for prior service with any township.