

**Note from the Attorney General's Office:**

1974 Op. Att'y Gen. No. 74-096 was clarified by  
1977 Op. Att'y Gen. No. 77-100.

**Syllabus:**

1. Public school employees, who are otherwise eligible, are entitled to apply for and receive unemployment compensation during the period of time that schools are not in session because of lack of funds provided they perform no service and receive no salary from the school district with respect to the period of the layoff.

2. The board of education is not relieved of its duty to pay fringe benefits during a period when a public school is closed for lack of funds, simply because public school employees have applied for and are receiving unemployment compensation benefits.

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, November 20, 1974

I have before me your request for my opinion on the following questions:

"1. Are public school employees entitled to apply for unemployment compensation during the period of time that schools are not in session because of lack of funds?

"2. Is the board of education permitted or required to continue fringe benefits such as sick leave authorized under Section 3319.141, Revised Code, and insurance authorized under Section 3313.202, Revised Code, during a period when employees are drawing unemployment compensation due to its schools being closed for lack of funds?"

R.C. 4141.01(B)(2) states in pertinent part that employment for purposes of unemployment compensation includes:

"(a) Service performed after December 31, 1971, by an individual in the employ of the state or any of its instrumentalities, or in the employ of the state and one or more other states or their instrumentalities, in the classified service as defined in division (B) of section 143.08 of the Revised Code or the services of employees covered by voluntary election, as provided under divisions (A)(4) and (5) of this section;

"(i) Service performed after December 31, 1973, by an individual in the employ of any political subdivision of this state or any instrumentality of that political subdivision except for service performed as a substitute teacher employed by a public school district pursuant to section 3319.10 of the Revised Code.

"(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term 'employment' as defined in the 'Federal Unemployment Tax Act,' 84 Stat. 713, 26 U.S.C.A. 3301, solely by reason of section 26 U.S.C.A. 3306 (c)(8) of that act and is not excluded under division (B)(3) of this section; \* \* \*."  
(Emphasis added.)

R.C. 4141.29 (I) provides:

"(I) Benefits based on service in employment as provided in divisions (B)(2)(a) and (B)(2)(b) of section 4141.01 of the Revised Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to Chapter 4141. of the Revised Code; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education, as defined in division (Z) of section 4141.01 of the Revised Code, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms. Benefits based on service for a public school district or for a school, training center, or workshop operated by a county board of mental retardation shall not be paid to any individual for any week of unemployment which begins during the period between two successive academic years

or terms of the employing school district or county board of mental retardation provided the individual was in employment with the school district or county board of mental retardation at the termination of the first such academic year or term. An individual who is employed by a public school district or a county board of mental retardation for a minimum of forty-six weeks in other than an instructional research, or principal administrative capacity, shall not be subject to the disqualification contained in this division. However, any individual employed by a public school district or a county board of mental retardation shall be notified by April thirtieth each year if he is not to be reemployed the following academic year."

Thus, for the general purposes of unemployment compensation, public school employees, except substitute teachers, are engaged in employment which is includable under R.C. 4141.01(B)(2)(a)(i). R.C. 4141.29(I) provides that benefits based on such employment are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to R.C. Chapter 4141 with the exception that public school employees are disqualified from the receipt of unemployment benefits between successive academic years.

R.C. Chapter 4141 does not, however, specifically provide for the extension of unemployment compensation benefits to public school employees who are employed by a school district but are temporarily laid off when the school is closed due to a lack of funds. It must be noted, however, that the employees are involuntarily laid off because of the economic adversity of the school district, and as such they are unable to perform any services and are not receiving their salary during that period. R.C. 4141.01(M) states that an individual is totally unemployed:

"\* \* \* in any week during which he performs no services and with respect to such week no remuneration is payable to him."

And R.C. 4141.01(N) states that:

"(N) An individual is 'partially unemployed' in any week if, due to involuntary loss of work, the total remuneration payable to him for such week is less than his weekly benefit amount."

It must also be noted that the unemployment compensation laws were designed to assist those who are unfortunate enough to be involuntarily unemployed through adverse conditions. Nowak v. Board of Review, 150 Ohio St. 535 (1948). See also United States v. Unemployment Compensation Board of Review, 16 Ohio Op. 323, 30 Ohio L. Abs. 509 (1940).

In an analogous situation, the court in Dudley, Admr. v. Morris, 10 Ohio St. 2d 235 (1967), held that where an employer pursuant to labor-management contract, allocates the vacations of his employees, an employee who finds himself on an enforced vacation without pay is involuntarily and totally unemployed for the duration of such "vacation" and is entitled to receive the benefits provided in the Unemployment Compensation Act.

In light of the foregoing and R.C. 4141.46 which provides that the Unemployment Compensation laws must be construed liberally, I find that with the exception of substitute teachers public school employees, who are otherwise eligible, are entitled to apply for and receive unemployment compensation during the period of time that schools are not in session because of lack of funds provided they perform no service and receive no salary from the school district with respect to the period of the layoff.

As I understand the second question your concern is whether the fact that public school employees are drawing unemployment compensation during the time that a school is closed for lack of funds relieves the school district of its obligation to continue fringe benefits for those employees drawing unemployment compensation. Sick leave is authorized by R.C. 3319.141 and insurance by R.C. 3313.202, and other benefits may be provided under the terms of an individual public school employee's contract pursuant to R.C. 3319.08 or R.C. 3319.081. The legislative intent in enacting these sections was to guarantee benefits and provide employment security to the public school employees covered by the statutes. See Gates v. Board of Education, 8 Ohio App. 2d 76, 220 N.E. 2d 715 (1966).

In Opinion No. 74-050, Opinions of the Attorney General for 1974, I stated that a board of education is required to continue paying the premiums on insurance covering a teacher, purchased under R.C. 3313.202, after the teacher submits his resignation or applies for retirement, until the effective date of such resignation or retirement. Pertinent to the question of hand, I also indicated that payment of fringe benefits which are provided by statute or contract represents a form of compensation to a public school employee and that a discontinuance of these benefits would be a decrease of compensation in violation of R.C. 3319.12 which provides in part as follows:

" \* \* \* No contract or supplemental contract for the employment of a teacher, whether for an administrative or supervisory position, a position provided for by sections 3319.01 and 3319.02 of the Revised Code, regular teaching duties, or additional duties, may be terminated or suspended by a board of education except pursuant to section 3319.02 or 3319.16 of the Revised Code, and the salaries and compensations prescribed by such contracts shall not be reduced by a board of education unless such reduction is a part of a uniform plan affecting the entire district. \* \* \*"  
(Emphasis added.)

It follows that any reduction or discontinuance of fringe benefits by a board of education must be made pursuant to the above discussed sections. I find nothing in such sections which would qualify an employee's right to these benefits in the event that he or she applies for and receives unemployment compensation under R.C. Chapter 4141.

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

1. Public school employees, who are otherwise eligible, are entitled to apply for and receive unemployment compensation

during the period of time that schools are not in session because of lack of funds provided they perform no service and receive no salary from the school district with respect to the period of the layoff.

2. The board of education is not relieved of its duty to pay fringe benefits during a period when a public school is closed for lack of funds, simply because public school employees have applied for and are receiving unemployment compensation benefits.