

OPINION NO. 69-077

Syllabus:

1. Under Section 143.29, Revised Code, the responsible administrative officer of the employing unit in County government may approve the accumulation of more than ninety days of sick leave and he may, at his discretion, approve this allowance for an individual employee or may adopt a department policy for such allowance, applying to all employees.

2. The responsible administrative officer of the employing unit in the County government may not pay an employee for more sick leave than the employee has earned at the rate provided in Section 143.29, Revised Code.

To: E. Raymond Morehart, Fairfield County Pros. Atty., Lancaster, Ohio
By: Paul W. Brown, Attorney General, July 3, 1969

I have your request for my opinion relative to the interpretation of the sick leave provisions set forth in Section 143.29, Revised Code. The request reads as follows:

"1. May the responsible administration officer of the employing unit in County government adopt a policy permitting his employees to accumulate more than ninety days sick leave? If so, may he adopt such a policy on an individual employee basis or must it be a department policy applying to all employees?

"2. May the responsible administration officer of the employing unit in County government pay an employee for more sick leave than that employee has accumulated under the provisions of Section 143.29 of the Ohio Revised Code?"

Section 143.29, Revised Code, provides in part as follows:

"Each employee, whose salary or wage is paid in whole or in part by the state, and each employee in the various offices of the county service and municipal service, and each employee of any board of education, 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 illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness or death in the employee's immediate family. Unused sick leave shall be cumulative up to ninety work days, unless more than ninety

days are approved by the responsible administrative officer of the employing unit. * * *

An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave. * * * This section shall be uniformly administered as to employees in each agency of the state government by the director of state personnel." (Emphasis added)

The first part of question one, asking whether the responsible administrative officer of the employing unit may adopt a policy permitting the accumulation of more than 90 days sick leave, I believe is answered by the underlined portion of the statute above quoted. It is expressly provided that the responsible administrative officer may approve the allowance of more than 90 days. The second part of question one asks whether such allowance of greater accumulation of sick leave over and above the specified 90 days sick leave may be on an individual basis or is it required that it be made effective only to apply uniformly to all employees in the unit. It is my opinion that such approval may be granted by the responsible administrative officer on either basis at his election.

As pointed out in Opinion No. 3626, Opinions of the Attorney General for 1954, the words "public agency" as used in Section 143.29, supra, with reference to transfer include the state, the several counties, all municipalities and all boards of education. But the words "each agency of the state government" as used in said section with reference to uniform administration, include the various departments and agencies of the state government, but do not include the several political subdivisions therein mentioned. Your question relates to uniform administration. More in point, this question was considered by one of my predecessors in Opinion No. 2073, Opinions of the Attorney General for 1961, in his interpretation of Section 143.29, supra, and I quote from page 139:

"* * * the board of education has discretion in determining the method of granting such approval, i.e., general approval for all employees or specific approval for individual employees."

The reasoning and logic behind this holding applies with equal force, in my opinion, to County employees as it does to employees of a Board of Education and I affirm this holding.

As I interpret question No. 2, you ask whether the County government may pay one of its employees for more sick leave than he has earned under the formula set out in said Code Section, being at the rate of four and six-tenths hours of sick leave for each completed eighty hours of service. I am of the opinion that the question thus framed must be answered in the negative. Section 143.29, supra, states that each employee covered "shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay." While this section does make provision for an increase in the amount of sick leave that may be accumulated, no provision is made for an increase in the amount of earned sick leave for a given period of service. The legislative intent is stated in exact terms as to the amount earned by each employee, indicating no more and no less. Any

other interpretation would tend to make this statute on rate of usable sick leave earned of little meaning.

I am of the opinion, therefore, and you are so advised:

1. Under Section 143.29, Revised Code, the responsible administrative officer of the employing unit in County government, may approve the accumulation of more than ninety days of sick leave and he may, at his discretion, approve this allowance for an individual employee or may adopt a department policy for such allowance, applying to all employees.

2. The responsible administrative officer of the employing unit in the County government may not pay an employee for more sick leave than the employee has earned at the rate provided in Section 143.29, Revised Code.