

Opinion No. 2013-129

March 18, 2013

The Honorable Richard A. Weiss, Director
Department of Finance and Administration
1509 West Seventh Street, Suite 401
Post Office Box 3278
Little Rock, Arkansas 72203-3278

Dear Mr. Weiss:

This is my opinion on your question about a law that lets teachers keep unused sick leave when changing school districts.¹ Your question concerns a teacher leaving one district but not immediately starting with another.

As you note, the law does not state a limit on the time that may pass between the teacher's leaving one district and joining another. You compare the law to one that

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- (a) Whenever an employee of a school district, an education service cooperative, a state education agency, or a two-year college in this state shall leave the school district, education service cooperative, state education agency, or two-year college and accept employment in another school district in this state, education service cooperative, state education agency, or two-year college, the employee shall be granted credit by the new school district, education service cooperative, state education agency, or two-year college for any unused sick leave accumulated by the employee while employed by the former school district but not to exceed a maximum of ninety (90) days.
- (b) The accumulated and unused sick leave credit shall be granted to the employee upon furnishing proof in writing from the school district of former employment of the employee.
- (c) The provisions of this section shall apply to employment with another school district, education service cooperative, state education agency, or two-year college on or after July 1, 1997.

A.C.A. § 6-17-1206 (Repl. 2013). The law originally applied only to teachers and school districts. *See* Act 177 of 1975. It was later amended also to cover education service cooperatives, state education agencies, two-year colleges, their employees, and school district employees other than teachers. *See* Acts 834 of 1991, 774 of 1999, and 617 of 2007. For simplicity's sake, I refer here only to "teachers" and "school districts" but I use those terms to include the other employees and entities named in the law.

lets a state employee keep sick leave when transferring between state agencies “without a break in service.”² You state:

The Office of Personnel Management policy is that if a state employee transferring between state agencies has a break in service for more than 30 working days then the sick leave will not transfer. For consistency, OPM would establish the same 30 working day time period for public school employees and requests your opinion on whether this is proper application of the law.

Your question, as I understand it, is whether OPM’s proposed interpretation – the denial of sick-leave transfer if a teacher has a break in service of more than 30 working days – is proper application of the law.

RESPONSE

In my opinion, the answer to your question is probably “no.”

While the two laws you cite are similar, they differ in an important respect already noted: the state-employee law lets a transferring employee keep sick leave only when the transfer is “without a break in service.”³ The teacher law, on the other hand, does not expressly limit teachers’ rights similarly. Nor do I see a compelling reason to read such a limit into the law.

These laws were enacted in the same session of the General Assembly,⁴ whose express limit on state-employee rights and simultaneous omission of a similar limit on teacher rights may evidence legislative intent to treat the two groups differently. The state-employee law demonstrates that the General Assembly knew how to and did limit sick-leave-retention rights by express provision when it deemed that appropriate. That it did not state a limit in the teacher law I take to evidence a lack of intent to impose the limit stated in the state-employee law. Absent clear evidence that an omission will frustrate legislative intent, courts will

² A.C.A. § 21-4-207(e)(3) (Supp. 2013).

³ *Id.*

⁴ *See* Acts 177 (teachers) and 567 (state employees) of 1975.

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not read into a statute a provision not included by the General Assembly.⁵ I see no such clear evidence here and so conclude that a court would not read a no-break-in-service rule into the teacher law. It follows, in my view, that interpreting the teacher law in the same way as a law that contains a no-break-in-service rule probably would be improper.⁶

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

⁵ See, e.g., *Scroggins v. Medlock*, 2011 Ark. 194, 381 S.W.3d 781.

⁶ A question may remain exactly how to interpret the law. One might maintain that common sense suggests there must be some limit on the length of a teacher's hiatus, though I do not necessarily accept that proposition. In any event, I, as an officer of the executive branch, cannot supply a rule where the legislature has not stated one. See, e.g., Op. Att'y Gen. 2013-026. Here, many governmental bodies, including all school districts, are charged with administering the law. These bodies may interpret and apply the law in any number of ways. People similarly situated may be treated differently as a result. Because legislative intent is obscure in this instance and there is a real possibility that people have been or will be treated differently under the law without good reason, legislative clarification is distinctly warranted.