

SEPTEMBER 22, 1949.

HONORABLE SANFORD BATES,  
*Commissioner, Department of  
Institutions and Agencies.*

## FORMAL OPINION—1949. No. 92.

DEAR COMMISSIONER:

This opinion answers the following two questions which have been raised concerning the rights of a civil service employee who is suffering from a physical infirmity:

1. Is sick leave cumulative from year to year, so that, for example, an employee who has taken no sick leave for ten years and then develops a heart ailment can take with pay an accumulated sick leave of approximately 150 days?

2. How may the services of an employee, for example, a painter who has lost his eyesight, be terminated when he is ready and willing, though unable, to perform the regular duties of his position?

On the first question, the law is clear that sick leave accumulates continuously from year to year throughout the employee's period of service. The pertinent statute (N. J. S. A. 11:14-2) expressly so provides in the following language:

"\* \* \* If any such employee requires none or only a portion of the allowable sick leave for any calendar year, the amount of such leave not taken shall accumulate to his credit from year to year and such employee shall be entitled to such accumulated sick leave of absence with pay if and when needed. In computing the accumulation of sick leave, the years of service of such employee prior and subsequent to the adoption of this act shall be used." \* \* \*

The foregoing statute was construed in *Ballarene vs. Rosenblum*, 133 N. J. L. 108, as providing for cumulative sick leave. It was there held that an employee who had served the Hudson County Board of Taxation for a period of sixteen years was within his rights in taking one hundred and six days of sick leave during his sixteenth year, and that at the end of that time he still had a credit of one hundred and fourteen sick leave days. The employee was held entitled to receive his salary during the entire period that such sick leave was taken.

In answer to the second question, it is my opinion that an employee who is ready and willing to work but is unable to perform his regular duties because of a physical ailment may first take his accumulated sick leave, and when that has been consumed, his services may be terminated in accordance with the procedure established by the rules of the Civil Service Commission.

Those rules, adopted pursuant to Chapter 14 of Title 11 and Section 11:6-2 of the N. J. S. A., provide in brief that after the employee has used up his accumulated sick leave, he may, with the approval of the employing department and of the Commission, receive the benefits of any one of the following three alternatives: (1) a leave of absence without pay for a period of one year; (2) placement upon a re-employment list for a period of two years; or (3) such leave of absence followed by such status on the re-employment list. If, at the end of any one of the three aforesaid periods of grace, he is still unable to resume his duties, the employee will be requested to resign. In any event, if, without the permission of the employing depart-

ment, he fails to report for work for more than five successive working days, he will be deemed to have resigned. I have been advised by the Department of Civil Service that the foregoing rules would apply to any employee who is unable to perform his regular duties, even though he may be ready and willing to do so.

If an employee has been in the classified service for the ten years preceding his disability, he shall, upon the application of the head of the employment department or upon his own application, be retired for ordinary disability, on a regular disability allowance if he is under sixty years of age and on a service allowance if he has reached or passed that age. (N. J. S. A. 43:14-30). Furthermore, if the disability resulted from an accident suffered in the course of his employment, and the employee has not attained the age of seventy years, he shall, upon the application of the employing department or upon his own application, be retired on an accident disability allowance. (N. J. S. A. 43:14-31).

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By: THEODORE BACKES,  
*Deputy Attorney General.*

OCTOBER 7, 1949.

MR. ROGER H. McDONOUGH,  
*Director, Division of the State Library,  
Department of Education,  
State House Annex,  
Trenton, New Jersey.*

FORMAL OPINION—1949. No. 93.

DEAR SIR:

I have your letter of the 29th ult. presenting the following question: "Is it possible to include in the official title of a municipally tax supported library words indicating that it is a memorial, for example, 'Free Memorial Public Library of ....."

By R. S. 40:54-11, the board of trustees of a municipal free public library is created a body corporate under the name of "the trustees of the free public library of ....."

It is clear from the foregoing that the trustees of a free public municipal library has a statutory name of "the trustees of the free public library of ....."

If your inquiry is whether the building may bear a sign "Free Memorial Public Library," the answer is in the affirmative.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB:B