

This becomes more clear when one notes the use of the singular terms in the second sentence of the above quoted statute which states, "upon said promotion, appointment, or employment."

This phraseology can mean but one thing, and that is that individual concern is limited to one appointment, or in lieu thereof, one promotion.

Very truly yours,
THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.

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NOVEMBER 17, 1953.

DR. LESTER H. CLEE, *President,*
Civil Service Commission,
State House,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 41.

MY DEAR DR. CLEE:

As we understand it, you seek advice in regard to the computation of annual vacation and accumulated sick leave for employees in the State and local services, and you specifically ask whether in computing the allowable vacation and sick leave the employee's service prior to his resignation, dismissal, or lay-off must be taken into consideration or should such computation be based only on that period of continuous service following his re-employment.

It is our conclusion that, prior to the passage of N. J. S. A. 11:14-1.1, allowable annual vacation and sick leave should be based upon the aggregate service of the individual within the classified service, but after the enactment of the aforementioned statute, only continuous service can be allowed as the basis of computation of vacation time but that the computation of sick leave remains as heretofore.

R. S. 11:14-1 provides in pertinent part:

"The chief examiner and secretary shall, * * *, prepare, and after approval by the commission, administer regulations regarding holidays, hours of work, attendance and annual sick and special leaves of absence with or without pay or with reduced pay for permanent employees in the classified service; provided, however, that every permanent employee in the classified service shall be granted at least the following annual leave for vacation purposes with pay * * *. In determining all vacation leave, the years of service of such employees prior and subsequent to the adoption of this act shall be used * * *."

R. S. 11:14-2 provides in pertinent part:

"In the preparation and administration of regulations regarding sick leaves of absence with pay as provided in section 11:14-1 of this Title, every employee in the classified service shall, in addition to his annual vacation leave with pay, be granted sick leave, as hereinafter defined, with pay of not less than * * *. 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. * * *"

R. S. 11:24A-1 and R. S. 11:24A-3 deal with employees in the classified service of counties, municipalities and school districts and are similar to the above statutes in that the section dealing with vacations by its terms refers to permanent employees, and the section dealing with sick leave applies to every employee in the classified service. They are also similar in that the service of affected employees before and after adoption of the act both count. None of the above four sections of the statutes referred to indicate whether aggregate service or only the most recent continuous service should be considered in computing annual vacation time allowable and accumulated sick leave.

R. S. 11:14-1 and R. S. 11:14-2 are to be considered as in *pari materia*. The former provides that "every permanent employee" in the classified service shall be affected, and the latter provides that "every employee" in the classified service. All employees in the classified service means permanent employees, because only permanent employees are and can be in the classified service. Although no specific section of Title 11 so states, and no case holds that classified service embraces, per force, only permanent employees, such may be inferred generally from the scheme of subtitles R. S. 11:4 and R. S. 11:22 which clearly separate the classified and unclassified services into distinct divisions.

As all of the four sections of the statutes above referred to provide that the years of service of an employee prior and subsequent to the adoption of this act are to be used in computing annual vacation and sick leave, the action of the Civil Service Commission in following this mandate was the correct one as applied to all persons in the classified service.

However, the Legislature, by a recent amendment of R. S. 11:14-1.1 approved and effective June 11, 1953, provided:

"In determining the annual leave for *vacation purposes* to which any employee in the classified service of the State service shall be entitled pursuant to Section 11:14-1 of the Revised Statutes, credit shall be given for all continuous, full-time service which such employee shall have served, whether the same shall have been served under temporary or permanent appointment in an office position or employment in the classified or unclassified service of the State service."

By the passage of this act, in computing annual leave for vacation purposes, the employee is entitled to credit for service with the State whether this service was in a temporary or permanent capacity and whether or not the same was in the classified or unclassified State service.

This interpretation, borne out by the "statement" appended to the report of this amendment in the "Current Service—New Jersey Legislature (Gann Co.)", indicates the purpose of the statute was to equalize vacation leave for both temporary and permanent full-time State employees, R. S. 11:14-1 by its terms being only applicable

to permanent employees. This amendment appears to have upset prior Civil Service Department rulings that aggregate service should be considered in determining the annual vacation time earned, since it clearly states "credit shall be given for all continuous full-time service".

Assuming compliance with the procedural requirements in adopting rules and regulations to the effect that aggregate service shall count in determining vacation time allowable and accumulated sick leave under R. S. 11:14-1, R. S. 11:14-2, R. S. 11:24A-1 and R. S. 11:24A-3, such interpretation would appear to be valid before the enactment of R. S. 11:14-1.1. Subsequent to the enactment of R. S. 11:14-1.1, it would appear that only "continuous service" could be counted in the computation of vacation time pursuant to R. S. 11:14-1. To count periods of service prior to a break in service, under R. S. 11:14-1 would require an interpretation of "all continuous, full-time service" contrary to the plain meaning of the words; to discount all periods prior to a break in service may work obvious hardships in some cases; to have different rules applicable to parallel sections R. S. 11:14-1 and R. S. 11:24A-1 will result in a complete lack of uniformity.

It must be noted, however, that in computing accrued *sick leave* pursuant to R. S. 11:14-2 and R. S. 11:24A-3, aggregate service of employees in the classified service should be used rather than continuous service.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.

jwg;d

OCTOBER 20, 1953.

HONORABLE WALTER T. MARGETTS, JR.,
State Treasurer,
State House,
Trenton, N. J.

FORMAL OPINION—1953. No. 42.

DEAR SIR:

You have requested my opinion concerning two questions relating to the Corporation Business Tax Act (N. J. S. A. 54:10A-1, et seq.). You desire to be advised specifically on the following:

(1) Can the State of New Jersey institute legal proceedings against a company in New York to enforce the collection of delinquent franchise and corporation business taxes?

(2) Does the Director of the Division of Taxation have the authority to employ the agreement method provided under N. J. S. A. 54:10A-19.1(c) to make a settlement with the taxpayer for such sum less than the full amount due as to him seems expedient under the circumstances?