Mr. R. R. Wickersham  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana

Dear Mr. Wickersham:

This is in reply to your letter requesting my Official Opinion. Your letter reads as follows:

"We respectfully request your official opinion upon the question:

"Does O. A. G. 1945, page 277, answer the following:

"Is it legal for a city to grant full-time municipal employees who are paid an hourly wage, vacations, sick and holiday leaves with pay, when the continuity of employment is not otherwise broken?

"The foregoing was submitted to this department by the mayor of a certain city. The city has an agreement with its employees to the effect that they are not entitled to vacation pay or for leaves until they have been employed for a period of 52 weeks.

"The amount appropriated for wages is on an annual basis but paid at an hourly rate. Some of the employees have worked for the city for more than 15 years."

I have examined 1945 O. A. G., page 277, No. 65, and am in agreement with the statements and conclusions contained therein; however, the facts presented by your question are materially different from those upon which said opinion was based and it does not, in my judgment, answer your question.

The 1945 opinion held that persons employed on an hourly wage were not entitled to paid vacations for the reason that when the hourly employment was interrupted the contract of employment ceased; that this manner of employment denoted a degree of temporary employment; that there was no implied continuity of employment in such case and that only the time of actual employment could be considered.
1954 O. A. G.

In the case submitted by you it would appear that the employees involved are full-time municipal employees who are paid on an hourly basis and, further, that the city has agreed to grant them vacations, sick and holiday leaves with pay after they have been employed for a period of 52 weeks.

In such a situation the vacation, sick and holiday leaves with pay would appear to be a part of the consideration flowing from the city to the employees under the contract of employment. Therefore, I do not believe that the continuity of employment is interrupted during the period when these employees are on vacation or leave since the right to this time off does not accrue to these persons until they have been employed full-time, for a period of 52 weeks.

Likewise, after these employees have been employed full-time for a period of 52 weeks, it would appear that they had earned the vacation, sick and holiday leaves with pay under the contract of employment with the city.

As pointed out in the 1945 opinion, municipalities may elect to bring themselves under the provisions of the "State Personnel Act" which is the Acts of 1941, Ch. 139, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1301 et seq., and this Act makes reference to annual and sick leaves for persons employed thereunder. However, I do not think the Personnel Act was intended to be the exclusive authority for vacations for municipal employees; therefore, it would not appear that there was anything inherently improper in the contract or agreement of employment which you have described in your question. This opinion is, however, limited to such a factual situation.