

1975 O. A. G.

OFFICIAL OPINION NO. 17

September 22, 1975

Honorable John F. Shawley
Indiana State Senator
225 East 9th Street
Michigan City, Indiana 46360

Dear Senator Shawley:

This is in response to your request for my official opinion on the following question:

“Does a school board have the authority to reinstate sick leave days when payment for time lost has been partially compensated under the Workmen’s Compensation Act?”

ANALYSIS

Section 2 of the Indiana Workmen’s Compensation Act of 1929, as amended, being Indiana Code of 1971, Section 22-3-2-2, provides, in part, the following:

“[E]very employer and every employee, except as stated herein, shall be required to comply with the provisions of this law, respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby.”

Section 2 of Acts 1945, Ch. 231, the minimum salary law for teachers, Code Section 20-6-16-2, contains the following provision:

“Each teacher shall be entitled to be absent from work on account of illness or quarantine for a total of ten days the first year and seven days in each succeeding year *without loss of compensation*. . . . If in any one school year the teacher shall be absent for such illness or quarantine less than the prescribed number of days, the remaining days shall be accumulative to a total of ninety days.” (My emphasis.)

OPINION 17

The relationship between these two laws was discussed by Attorney General James A. Emmert at 1945 O.A.G. No. 134, p. 570. He concluded that double payment for the same injury or illness is not authorized by either law and that

“a teacher who received benefits under the Compensation Act while absent from her employment would only be entitled to receive under Chapter 231 of the Acts of 1945 the difference between the amount received under the Workmen’s Compensation Act and the full benefits provided by said Chapter 231 of the Acts of 1945.” 1945 O.A.G. at p. 574.

It is in light of this opinion that you ask what disposition should be made of a teacher’s sick leave days when, although he is receiving benefits equal to a full day’s salary, only a portion of those benefits is being paid pursuant to the salary law which establishes sick leave.

If a teacher were to accept only workmen’s compensation benefits, the school corporation which pays those benefits (probably through an insurer) would not be authorized to deduct sick leave days, since they are granted under a separate act. A school corporation may deduct from a teacher’s sick leave only the number of days which represents the amount of benefits paid under the salary law. Code Section 20-6-16-2. For example, if a teacher whose daily rate of pay is \$50.00 misses 10 days of work because of an injury incurred on the job and receives \$100.00 in workmen’s compensation benefits, he also would receive \$400.00 in benefits under the salary law.

The school corporation, in that situation, should deduct, not 10 sick days, but only eight sick days since that is the number which represents the amount of benefits that teacher received under the salary law. Although it is true that the effect of not deducting the two sick days is to provide two additional sick days to a teacher who, except for receiving workmen’s compensation benefits, would have exhausted all 10 days, the prohibition noted by Attorney General Emmert is against double payment *for the same injury or illness*. The *net* annual effect of deducting only eight days may well be

1975 O. A. G.

to permit the injured teacher to keep both benefits; however, there would not be a double payment for the same injury or illness.

In a situation where a school corporation deducts sick days and fully pays an injured teacher under the salary law prior to the teacher's receiving workmen's compensation benefits, an amount equal to the workmen's compensation benefits must, pursuant to 1945 O.A.G. No. 134, be credited to the fund from which sick leave payment is made; and the school corporation must reinstate the number of sick leave days which represent the amount of benefits received under workmen's compensation. Obviously, not all calculations concerning the proportion of benefits under these two laws will work out with the precision shown in the example. Nevertheless, school corporations should deduct, to the nearest $\frac{1}{2}$ day, only those sick days related to benefits paid under the salary law.

CONCLUSION

It is, therefore, my Official Opinion that while a teacher is entitled to each earned sick leave day for actual sickness or injury, in the event a teacher also receives workmen's compensation payments during the same time frame as receiving sick leave, an adjustment must be made so that the combined earned sick leave days and workmen's compensation payments do not exceed that teacher's normal salary for the same time frame.