

Opinion No. 225.**County Commissioners—Vacation with Pay—Powers and Limitations—Duties.**

Held: County commissioners may if they determine the same to be for the best interests of the county, and in their sound discretion, provide for leaves of absence or annual leave with pay for the county employees who are hired on a day or hourly basis, provided the leave fairly applies to all employees and is not discriminatory.

July 10, 1944.

Mr. H. R. Eickemeyer
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Eickemeyer:

You have requested an opinion of this office on the following question:

“Does the board of county commissioners have the right to give a vacation with pay to an employee of the county who is hired on a day or hourly basis?”

Generally speaking the county commissioners are the executive officers of the county and charged with the duty of successfully operating the county business. Chapter 345, Political Code, being Sections 4465 to 4466, Revised Codes of Montana, 1935, sets forth the general powers of boards of county commissioners. It is to be noted that nothing is specifically stated in that chapter with reference to either allowing or disallowing vacations. However, Section 4465.22 provides as follows:

“The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To make and enforce such rules for its government, the preservation of order and the transaction of business, as may be necessary.”

And Section 4465.24 provides:

“The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.”

Former opinions have been issued by Attorneys General of this state, namely, Opinion No. 398, Volume 15 and Opinion No. 220, Volume 19, Report and Official Opinions of the Attorney General, in which it has been held county officials may be granted leaves of absence on pay when the same did not disrupt the business of the county and if such were reasonable as to time taken off and the time of taking the same. As pointed out in your correspondence these two former opinions were not limited particularly to monthly paid officials or officers.

All provisions for leave of absence or annual leave on pay should be worked out on some basis which would be fair to all employees; that is, based on so much service rendered. Such leave or vacation with pay is considered as additional pay for the services rendered. This principle has been inaugurated by various federal, state and private employers and has been generally found to be of great importance in stabilization of employment and the better health and welfare of the employees and therefore beneficial to the employer. The fact that the other employers are now generally following some such plan may make it necessary that counties adopt such a program in order to secure and retain competent employees to carry on the county business, the carrying on of which is a duty imposed by law upon the county commissioners. Thus, the adoption of such a program would fall within the powers granted by Sections 4465.22 and 4465.24, Revised Codes of Montana, 1935. The

reasoning within the former Attorney General's opinions herein referred to, and particularly Opinion No. 398, Volume 15, is, in my opinion, applicable to your inquiry.

Therefore, it is my opinion the county commissioners may by resolution if they determine the same to be for the best interests of the county, and in their sound discretion, provide for leaves of absence or annual leave with pay for the county employees who are hired on a day or hourly basis, provided the leave fairly applies to all employees and is not discriminatory.

Sincerely yours,
R. V. BOTTOMLY
Attorney General