

Opinion No. 80

**Public Employees—Vacation Leave—
Unused Vacation Leave —
Cash Compensation —
Interdepartment Transfers**

HELD: An employee, upon completion of one year service with the state, is eligible for cash compensation for unused vacation leave previously accumulated in one department of the state prior to transfer to another state agency.

Mr. Melvin P. Martinson
Merit System Supervisor
Sam W. Mitchell Building
Helena, Montana

Dear Mr. Martinson:

You have requested an official opinion concerning cash compensation for unused vacation leave to an employee who has transferred from one state agency to another.

The facts presented by the inquiry are that the employee, prior to transfer, had served eleven (11) months in one department, and immediately thereafter, several months in the department to which she transferred.

Section 59-1001, R.C.M., 1947, provides for annual vacation leave, and is as follows:

"Each employee of the state, or any county or city thereof, who shall have been in continuous employment and service of the state, county or city thereof, for a period of one (1) year from the date of employment is entitled to and shall be granted annual vacation leave with full pay at the rate of one and one-quarter (1¼) working days for each month of service."

To be eligible for vacation leave an employee must be employed for a period of one year and until that period of service is reached, the right to vacation leave does not vest. However, once the condition precedent, service of one year, is met, all rights accumulated during the one year period vests, and the employee is entitled thereto as a matter of right. (See Section 58-206, R.C.M., 1947; 24 Reports and Official Opinions of the Attorney General, No. 337; 25 Reports and Official Opinions of the Attorney General, No. 73). The rights accumulated include the right to cash compensation, upon transfer from one department of the state to another, for unused vacation time.

Section 59-1003, R.C.M., 1947, provides for cash payment for unused vacation leave which reads as follows:

"An employee, who is separated from the service of the state, or any county or city thereof, for reason not reflecting discredit on himself, or any employee transferred to or employed in another division or department of the state, or any county or city thereof, shall be entitled upon the date of such separation from, transfer to or acceptance of new employment within the state, county, or city service, to cash compensation for unused vacation leave." (Emphasis Supplied.)

The obvious reason for this section is for administrative expediency and convenience in handling vacation leave of employees and to prevent the burdening of the department to which the employee transfers with accumulated vacation rights accumulated in another department.

This opinion is in no way to be construed as in conflict with 25 Reports and Official Opinions of the Attorney General, No. 33, which held that an employee may not work during his vacation period and collect his regular compensation in addition to the statutory grant of pay for vacation period that he has earned for the reason that this opinion governs only those situations which arise and are governed by Section 59-1003, R.C.M., 1947.

It is therefore my opinion that an employee, upon completion of one year service with the state, is eligible for cash compensation for unused vacation leave previously accumulated in one department of the state prior to transfer to another state agency.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.