

Opinion No. 22

**Annual Vacation Leave—State Employees—Terms and Conditions of
Employment—Continuous Employment and Service**

Held: The phrase "continuous employment and service of the state, . . ." inserted in the provisions of section 59-1001, RCM, 1947, through the enactment of Chapter 152, Laws of 1951, has reference to the continuity of state employment in the light of its regularity over a period of time, and has no reference to the terms and conditions upon which a person or group is employed by the state.

July 17, 1957

Dr. Roland R. Renne
President
Montana State College
Bozeman, Montana

Dear Dr. Renne:

You have requested my opinion regarding the application of Section 59-1001, Revised Codes of Montana, 1947, to a certain group of employees at Montana State College. You describe this group as members of certain craft unions who are employed on an hourly wage scale according to the terms and conditions of the area wide collective bargaining agreement currently in force between the unions representing these employees and local contracting organizations. You mention that Montana State College took no part in the negotiation of this agreement.

The question presented is whether this group is "in continuous employment and service of the state" so as to be entitled to the vacation privileges granted by Section 59-1001, *supra*, upon completion of one year's employment.

The fact that this group is employed under terms and conditions identical to those contained in the current area wide collective bargaining agreement, the negotiation of which Montana State College took no part, does not in any manner effect their status as employees of Montana State College. A new contract comes into existence between the college and the group at the time of their employment, and it is upon this contract that the rights granted by Section 59-1001, *supra*, are based.

An examination of the legislative history of the phrase "in continuous employment and service of the state," indicates that the phrase has no relation to the terms and conditions upon which the state employee serves the state.

The original act which granted an annual vacation leave to the employees of the state, city or county was enacted as Chapter 131, Laws of 1949, and in Section 1 thereof provided:

"Section 1. Each employee of the state or any county or city thereof, 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, such service to be computed from the date of employment."

It was held in 24 Report and Official Opinions of the Attorney General, No. 37, that by this enactment the legislature established a minimum vacation leave to which the employee would be entitled as a matter of right.

In 1951 the legislature conditioned the exercise of this right when, through the enactment of Chapter 152, Laws of 1951, it amended Section 1, Chapter 131, Laws of 1949, providing as follows:

"Section 1. 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 (1 $\frac{1}{4}$) working days for each month of service."

The effect of this amendment, in my opinion, was to require that each employee, before he became entitled to annual vacation leave, perform a period of service, characterized as a certain amount of time, as an employee of the state, city or county.

It is therefore my opinion that the phrase "continuous employment and service of the state . . ." means continuity of employment in the light of its regularity over a period of time, and has no reference to the terms and conditions upon which the contract of employment is based.

Very truly yours,
FORREST H. ANDERSON
Attorney General