

**Opinion No. 85****Sick Leave—Vacation Allowance—State Board of Education, Powers of**

**Held: The State Board of Education has the power to allow and may in its discretion grant a stated amount of sick leave per month to personnel under its jurisdiction, in addition to the vacation allowance provided for by statute (Section 59-1001, RCM, et seq.).**

December 4, 1958

Miss Harriet Miller, Secretary  
State Board of Education  
Capitol  
Helena, Montana

Dear Miss Miller:

You have requested my opinion whether the state board of education may grant a regular allowance of sick leave to employees of the institutions under their control.

More specifically, you ask whether a stated monthly allowance of sick leave would be in conflict with the Montana statutes granting a regular allowance of vacation leave for each month of service over one year (Sections 59-1001 through 59-1007, RCM, 1947).

Essentially your question involves a determination of whether the vacation leave statutes are intended to be exclusive and a substitute for any and all other kinds of paid leave from state employment. This question is considered in some Montana statutes and in previous opinions of the Attorney General.

The vacation leave statutes themselves contemplate that sick leave may be granted in addition to the allowed paid vacation time. Section 59-1005, RCM, 1947, specifically provides that absence because of illness shall not be charged against the statutory vacation allowances:

“Absence from employment by reason of illness shall not be chargeable against annual vacation leave.”

The question remains whether the board has the power to fix a policy granting a specific amount of sick leave for each month of employment.

The board of education has a broad and general grant of powers of supervision over the institutions under its jurisdiction and control (See Sections 75-107 and 75-301, RCM, 1947). The power to fix the working conditions of employees is necessarily included in this broad grant.

This office has previously held that other public bodies having comparable grants of power over their departments could give paid time off to their employees in amounts exceeding the standard set in the vacation statute (Sec. 59-1001, *supra*). In Opinion No. 37, Volume 24, it was held that county commissioners could give vacations or vacation pay to persons who had not been in the county service long enough to have entitlement under the vacation statute. That opinion said:

“. . . the only effect of Chapter 131, Session Laws of 1949, was to establish a minimum vacation leave to which the employee would be entitled as a matter of right. Hence, it is my opinion that it is within the inherent power vested in boards of county commissioners by virtue of their supervisory position to grant vacation time or separation pay in lieu of vacation time even though the county employee may not be in continuous service for one year.”

Opinion No. 73, Volume 25, held that a school board could similarly grant a paid vacation to an employee who was not entitled to a vacation by statute.

There is no substantial difference between those situations and the one at hand.

The vacation statutes (Secs. 59-1001 through 59-1007, RCM, 1947) provide a minimum entitlement to paid vacations for public employees. They do not limit the powers of officers, boards and departments of state and county government to grant additional allowances of paid leave if those boards or officers determine in their discretion that such action is necessary and desirable for the proper functioning of their departments.

It is, therefore, my opinion that the board of education has the power to allow and may in its discretion grant a stated amount of sick leave per month in addition to the statutory vacation allowances (Sec. 59-1001, RCM, 1947, *et seq.*).

Very truly yours,  
FORREST H. ANDERSON  
Attorney General