

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 15

EMPLOYEES, PUBLIC - Rate of expenditure of accrued leave credits when changing from eight-hour to ten-hour working day;

SICK LEAVE - Rate of expenditure of accrued leave credits when changing from eight-hour to ten-hour working day;

VACATIONS - Rate of expenditure of accrued leave credits when changing from eight-hour to ten-hour working day;

ADMINISTRATIVE RULES OF MONTANA - Sections 2.21.122(b), 2.21.135, 2.21.143, 2.21.216(7), 2.21.233, 2.21.288;

MONTANA CODE ANNOTATED - Sections 2-4-302, 2-18-604, 2-18-612, 2-18-618, 39-3-405.

HELD: Accrued employee leave time is calculated on a hourly basis for the purpose of determining the amount of leave time credited to employees who change from an eight-hour work day to a ten-hour work day.

12 May 1981

John N. Radonich, Esq.  
Anaconda-Deer Lodge County Attorney  
108 East Park Avenue  
Anaconda, Montana 59711

Dear Mr. Radonich:

You have requested my opinion on the following question:

When an employee has accrued days of vacation and sick leave on a schedule of eight-hour working days is the accrued leave expended on a daily basis or an hourly basis when the employee changes to a schedule of four ten-hour working days per week?

A review of the facts of your situation and the pertinent statutes is necessary to fully understand your question. Section 2-18-612, MCA, provides that an employee earns vacation leave credits at the rate of fifteen working days per year for the first ten years of service, eighteen days per year for the next five years, twenty-one days per year for the next following five

## OPINIONS OF THE ATTORNEY GENERAL

years, and twenty-four days per year for each year after twenty years of service. Section 2-18-618(1), MCA, provides that sick-leave credits are earned at the rate of twelve working days per year. Your letter informs me that police employees of Anaconda-Deer Lodge County worked a schedule of six consecutive eight hour days, followed by three days off, and accrued vacation and sick leave in units of eight-hour working days until July 1, 1980. On that date, a new collective bargaining agreement became effective, which provided for a work week consisting of four consecutive ten-hour days. The employees now contend that each working day of vacation and sick-leave credit accrued at the rate of eight hours per working day entitles the employee to a ten-hour vacation or sick-leave day off. The county contends that the accrued vacation and sick-leave credits must be converted into hours by multiplying the working days of credit accrued by eight. This product is then divided by ten, according to the county, to determine how many new ten-hour days of vacation or sick leave are credited to each employee.

The employees have asserted that the plain language of the above-quoted statute controls--a working day of leave accrued should entitle the employee to an entire working day of leave expended, even though the working day for accrual purposes is shorter than the working day for expenditure purposes. I am not persuaded that this analysis is correct. Sections 2-18-612 and 2-18-618, MCA, govern the rate at which leave accrues; they do not speak to the rate at which accrued leave is expended. No provision of Title 2, chapter 18, MCA, defines the rate at which leave is expended. Thus, the pertinent statutes simply do not answer the question presented.

Title 2, chapter 18, MCA, is a comprehensive statutory enactment governing the administration of the state and county employee pay and benefit system. In construing such statutes, the interpretation of the administrative body charged with the responsibility of executing the legislative plan is entitled to substantial weight. Montana Power Co. v. Cremer, \_\_\_ Mont. \_\_\_, 596 P.2d 483 (1979). In this regard, the pertinent administrative regulations can be said to express the interpretation of the agency. Department of Revenue v. Puget Sound Power & Light Co., \_\_\_ Mont. \_\_\_, 587 P.2d 1282 (1978). Section 2-18-604, MCA, empowers the State Department of Administration and the affected local governments to

## OPINIONS OF THE ATTORNEY GENERAL

adopt regulations governing administration of employee leave. While the Anaconda-Deer Lodge government has not acted to adopt regulations, the Department of Administration has created a comprehensive set of rules interpreting the leave provisions of state law. These rules explicitly recognize that vacation and sick leave credits are accrued and recorded on an hourly basis at a rate equal to a certain number of working days per year. ARM section 2.21.122(6), defines "sick leave credits" as an "earned number of sick leave hours." ARM section 2.21.134, provides for calculation of sick leave credits in hours, and ARM section 2.21.138, provides for recording of sick leave credits in units of hours or fractions of hours. The rules contain similar provisions governing vacation leave. ARM §§ 2.21.216(7), 2.21.223, 2.21.228. Thus, the Department of Administration has interpreted the pertinent statutes to favor the view put forth by the county--that a day of leave accrued on the basis of an eight-hour work day entitles the employee to only eight hours of leave, regardless of whether the employee's current work day is eight or ten hours.

This view accords with common sense. To hold otherwise would grant employees a windfall, giving them hours of leave time in excess of those granted to their colleagues who do not have the good fortune to have changed to a four-ten-hour day work week. Such a holding would also require the amending of the above-cited regulations, which were duly adopted after a notice and comment period during which the affected employees had every opportunity to make known their views. See § 2-4-302, MCA.

I conclude that the reasoning of the rule is sound. Under the rule, the employees in question here are entitled to leave equal to the total number of hours accrued prior to July 1, 1980, plus whatever leave accrues thereafter. The leave accrued prior to July 1, 1980, must be converted from days into hours and divided by ten to determine the number of ten-hour working days of leave each employee has accrued.

Contrary to the assertion of the employees, such a result does not implicate the wage and hour provisions of section 39-3-405, MCA, by requiring leave credits to accrue for overtime work. Sections 2-18-611 and 2-18-618, MCA, explicitly provide that for purposes of

OPINIONS OF THE ATTORNEY GENERAL

calculating leave credits 2,080 hours (i.e., 40 hours x 52 weeks) equals one year. Thus, hours worked in excess of 2,080 in a year by a permanent employee--i.e., overtime hours--do not enter into the computation of the employees' leave credits.

THEREFORE, IT IS MY OPINION:

Accrued employee leave time is calculated on an hourly basis for the purpose of determining the amount of leave time credited to employees who change from an eight-hour work day to a ten-hour work day.

Very truly yours,

MIKE GREELY  
Attorney General