

Opinion No. 124**State Board of Education—Montana State College—Vacation Pay.**

Held: The estate of a professor who dies while on a quarter out-of-residence is not entitled to payment of the professor's full salary for the entire quarter out-of-residence but should only receive such salary as is due and owing down to the date of death.

August 10, 1950.

Dr. George A. Selke, Chancellor
University of Montana
Capitol Building
Helena, Montana

Dear Dr. Selke:

You have presented the following facts to this office and have requested my opinion thereon. A professor who had been on the staff of the Montana State College since 1931, died on February 16, 1950. The professor was on a quarter out-of-residence leave at the time of his death. This leave was granted by the State Board of Education on December 13, 1949, for the winter quarter beginning January 2, 1950, and ending March 15, 1950. This was an "earned" eighth quarter out-of-residence. His last leave of this type was in the summer of 1947

and since that time he had been on the campus for nine consecutive quarters. You have asked whether the estate of the professor is entitled to the payment of the full salary for the entire quarter out-of-residence, that is, from the date of his death on February 16, 1950, to the end of the quarter, namely, March 15, 1950.

Section 75-107, Revised Codes of Montana, 1947, grants to the State Board of Education, among other powers, the power to provide, subject to the laws of the State, rules and regulations for the government of the affairs of the State educational institutions.

Pursuant to this grant of power the State Board of Education has adopted rules and regulations relating to quarters out-of-residence. The following rules and regulations are pertinent to the question posed herein:

2. Staff members employed by any unit of the University of Montana operating on the quarter system shall have one out of every eight quarters "out of residence," with full pay. An application for a quarter "out of residence," shall be submitted to the president in writing at least three months before the beginning of the "out of residence" quarter. . . .

6. Satisfactory programs or projects for use of "out of residence" periods include research, travel, related work in other institutions or private or business organizations, or other activities which the dean of the division and the president of the institution, with the approval of the State Board of Education, agree will improve the staff member professionally or which directly or indirectly benefit the institution or the State. If compensation is received by the Staff member during the "out of residence" period for services to other agencies he shall return such sums of money as received from the institution from which he has been granted "out of residence," less such amounts as may be necessary to cover travel, added living expenses, or related costs incurred in undertaking such work at other institutions, agencies, organizations, etc., or in other areas; but in no case shall the staff member be required to return an amount in excess of the money received from the institution during such "out of residence" period.

9. At each unit of the University the President shall act on the requests for the "quarter-out-of-residence" before the request is channeled on for further action. Included among the "satisfactory programs or projects for use of "out-of-residence" periods shall be included the rehabilitation or recuperation of the faculty member through a rest or vacation period for a part or for all of the out-of-residence quarter.

The fundamental proposition presented herein is whether the quarter out-of-residence granted to the professor in question was in the nature of a paid vacation. Opinion No. 56, Volume 23, Report and Official

Opinions of Attorney General, held that vacation pay which has been earned and is now owing is considered to be wages and is collectible in the same manner and under the same statutes as any other kind of wages. If the quarter out-of-residence is to be considered as a vacation then the estate of the professor in question would be entitled to the payment of the full salary for the entire quarter out-of-residence.

Webster's New International Dictionary, 2nd Edition, defines vacation as follows: A scheduled period during which activity or work is suspended, a recess; in educational institutions, an intermission of the regular studies and exercises, as between terms, during the summer, or at the Christmas season.

The deceased professor in applying for his quarter out-of-residence submitted the following application:

"It is my plan to spend the eighth quarter leave in visitation of colleges and universities to observe programs of student personnel work with special attention to counseling procedures and psychological testing. The organization of vocational education instruction will also be studied."

It is evident from the professor's application that his quarter out-of-residence was not to be a vacation within the ordinary meaning of the word. Rather he was engaged in visiting colleges and universities to observe methods and programs of personnel work. It was a journey that was to be of direct benefit to the State College in that the advancements and improvements observed by the professor would be applied to his department of the College. The factor which is persuasive in determining the question at hand is that the trip was undertaken in the interest of the institution and not for the pleasure of the professor.

It is my opinion that a quarter out-of-residence spent as in the instant case is not a vacation which a staff member has earned and may use as he sees fit, and therefore the full quarter payment should not be made. Rule 6 of the State Board of Education, herein before referred to makes it clear that the staff members time is not his own on a quarter out-of-residence. It specifically provides that if any compensation is received from other sources during such period the staff member shall return the money received from the State Institution. Thus again serving to show that the Institution is considered to be entitled to the professor's services during the quarter out-of-residence.

In view of these considerations it is my opinion that the estate of a professor who dies while on a quarter out-of-residence is not entitled to payment of the professor's full salary for the entire quarter out-of-residence but should only receive such salary as is due and owing down to the date of death.

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