

Opinion No. 127**Vacation Leave—School Districts—State Employees.**

Held: School District employees with the exception of school teachers are entitled to vacation leave in accordance with the provisions of Chapter 131, Laws of 1949.

September 5th, 1950.

Mr. James D. Freebourn
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Freebourn:

You have requested my opinion whether the employees of a school district are entitled to vacation leave under the provisions of Chapter 131, Laws of 1949.

The Sections of Chapter 131, Laws of 1949, which are pertinent to the question you have asked are as follows:

"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. . . .

"Section 3. 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. . . .

"Section 7. The term 'employee,' as used herein, does not refer to or include elected State, County, or city officials, or school teachers."

Section 1, above quoted, refers to employees of the State, or any County or city thereof. The question to be resolved then is whether or not employees of a school district can be considered as employees of the State or any County or city thereof.

It is at once apparent that a school district is an entity separate and distinct from any County or city and therefore a school district employee could not be considered an employee of either a County or city.

However, the rule in Montana is that a school district is a political subdivision of the State and as such is at all times subject to Legislative regulations and control, except in so far as the Constitution has placed limitations upon the Legislative department. *Fitzpatrick v. State Board of Examiners, et al.*, 105 Mont. 234, 70 Pac. (2nd) 285; *State ex rel. School District No. 29 v. Cooney*, 102 Mont. 521, 59 Pac. (2nd) 48; *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 Pac. (2nd) 624.

Since a school district is a political subdivision of the State it is only reasonable to assume that the Legislature intended that the employees of a school district were included in the category of State employees as provided in the Act. That assumption is strengthened by the language of Section 7 of Chapter 131 wherein the Act specifically excludes school teachers from the operation of the Act. Since the law makers deemed it necessary to specially withhold the benefits of the Act from school teachers, it follows therefrom that it was their intention that the remaining employees of school districts should be entitled to vacation leave.

It is therefore my opinion that school district employees with the exception of school teachers are entitled to vacation leave in accordance with the provisions of Chapter 131, Laws of 1949.

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