

Opinion No. 33.**Vacations—County Employees—Salary
in Lieu of Vacations—Double
Compensation.**

HELD: A county employee may not work during his vacation period and collect his regular compensation in addition to the statutory grant of pay for vacation period that he has earned.

June 27, 1953.

Mr. Robert T. Pantzer
County Attorney
Park County
Livingston, Montana

Dear Mr. Pantzer:

You have requested my opinion on the following question:

“May a county employee who has earned a paid vacation under the provisions of Chapter 131, Laws of 1949, as amended by Chapter 152, Laws of 1951, remain on the job during such vacation period and receive the money he would have received for wages, had he taken the vacation, and at the same time continue to work at his job and receive his usual salary for working. In other words, may he receive the money he would be paid during said vacation period in lieu of taking said vacation and at the same time remain on the job and continue to draw his salary or wages?”

Prior to the enactment of Chapter 131, Laws of 1949, the vacation policy for county employees was formulated by the various county officers with the approval of the boards of county commissioners. With the enactment of Chapter 131, *supra*, vacations for employees became a matter of right. (24 Opinions of Attorney General, No. 37.)

The underlying rationale for granting vacations was discussed in 20 Opinions of Attorney General 288, No. 225. That opinion was issued prior

to the enactment of Chapter 131, supra; however, it is of interest insofar as it sets out the public policy involved in granting vacations. The opinion states:

"All provisions for leave of absence or annual leave on pay should be worked out on some basis which would be fair to all employees; that is, based on so much service rendered. Such leave or vacation with pay is considered as additional pay for the services rendered. This principle has been inaugurated by various federal, state and private employers and has been generally found to be of great importance in stabilization of employment and the better health and welfare of the employees and therefore beneficial to the employer."

This policy has long been recognized in the State of Montana. (15 Opinions of Attorney General 278, No. 398, 19 Opinions of Attorney General 350, No. 220.) To permit employees to work during vacation periods would defeat the purpose of the vacation granted.

This particular problem has never been presented to our Supreme Court; however, in *Rawlings v. City of Newport*, 275 Ky. 183, 121 S. W. (2d) 10, that court ruled:

"During the month of December, 1937, Meister and Miles A. McIntyre, director of finance and city treasurer, were paid \$200.00 and \$233.42 respectively for 'extra services, 1936-1937,' in addition to their regular salaries for the month of December, 1937. An attempt was made to justify the payments on the ground that neither of these officials had taken vacations in 1936 or 1937. . . . The city solicitor contended that no vacation provision appeared in the salary schedule ordinance for administrative employees, while appellant sought to show that it was customary for these employees to take two weeks vacation each year with pay. Be this as it may, there was no justification for an attempt to pay an employee for a vacation period not taken. This constituted double payment for a particular period of time." (Emphasis supplied.)

Also in 22 Opinions of the Attorney General, 172, No. 104, it was held:

"A public officer may take his vacation or decline to take it as he likes. (In re Croker, (1903), 175 N. Y. 158, 67 N. E. 307) but if he does not take it he has not such a right in it that he may demand or accept additional compensation for the time worked which might have been spent on vacation with pay.

"It is, therefore, my opinion a public officer may not claim additional compensation for a vacation not taken where there is no statutory authority for such claim."

Should it happen that an emergency renders it impractical for an employee to take his vacation at a given time, he may accumulate his vacation time for a period of thirty days. (Section 2, Chapter 131, Laws of 1949.) Also, should his employment be terminated while he has unused vacation time credited against his employment, he is entitled to receive cash compensation for this period (Section 3, Chapter 131, Laws of 1949).

It is therefore my opinion that a county employee may not work during his vacation period and collect his regular compensation, in addition to the statutory grant of pay for vacation period which he has earned.