

**Opinion No. 73.****Truant Officers — Vacations — Vacations With Pay—Appointment of Truant Officers — County Superintendent of Schools.**

HELD: 1. A truant officer appointed by a school board of trustees is not entitled as a matter of right to a vacation with pay in the absence of one year's continuous service.

2. A school board of trustees has the power to grant a vacation with pay to a truant officer who has not been in continuous employment of the school district for one year.

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May 1, 1954.

Mr. C. W. Jones  
County Attorney  
Big Horn County  
Hardin, Montana

Dear Mr. Jones:

You have requested my opinion as to whether a truant officer employed by a school district for nine months of the year is entitled to a vacation in accordance with the provisions of Chapter 131, Laws of 1949, as amended by Chapter 152, Laws of 1951. (Sections 59-1001 through 59-1007, R. C. M., 1947, as amended.)

Section 59-1001, R. C. M., 1947, as amended by Chapter 152, Laws of 1951, reads as follows:

"Each employee of the state, or any county or city thereof, who shall have been in continuous employment and service of the state, county or city thereof, for a period of one (1) year from the date of employment is entitled to and shall be granted annual vacation leave with full pay at the

rate of one and one-quarter ( $1\frac{1}{4}$ ) working days for each month of service."

Section 59-1007, *supra*, excepts certain employees from the provisions of the Act:

"The term 'employee,' as used herein, does not refer to or include elected state, county, or city officials, or school teachers."

Section 75-1515, R. C. M., 1947, provides that the county superintendent of schools, an elected public official, shall act as truant officer in districts of the third class when no other provision is made. In such cases the truant officer, being an elected county official, would not be subject to the vacation law.

Section 75-2903, R. C. M., 1947, is a comprehensive general statute relating to the appointment, powers, and duties of truant officers and reads, so far as is pertinent, as follows:

"To aid in the enforcement of this Act, truant officers shall be appointed and employed as follows: In districts of the first and second classes, the board of trustees shall appoint and employ one or more truant officers; in districts of the third class the trustees shall appoint, if they deem it advisable, a constable or other person as truant officer; in districts not appointing a truant officer, it shall be the duty of the county superintendent to act as truant officer. The compensation of the truant officer shall be fixed and paid by the board appointing him . . ."

It is clear from the foregoing that a truant officer in districts of the third class may or may not be an elected public official depending on the discretionary acts of the board of trustees.

A previous opinion issued by this office, 23 Opinions of Attorney General 345, No. 127, held that:

"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."

Subsequent to this opinion, Section 59-1001, *supra*, was amended so as to require one year of continuous employment by an employee prior to the vesting of vacation rights. Since the truant officer in question has not served one year of continuous employment, he is not entitled as a matter of right to a vacation. However, it is within the power of the board of trustees to grant vacations to its employees, despite the fact that a full year of continuous service has not been rendered. The situation of the board of trustees insofar as their employees are concerned is analogous to that of the county commissioners and county employees. Of particular significance is 24 Opinions of Attorney General, No. 37, wherein it was stated:

"However, it should be noted that for many years prior to the enactment of the vacation law in 1949 it had been the custom for the various departments of the state, county and city to grant vacations to employees. How much time was allowed was determined by the policy formulated by the department head under whom the employees worked. In the counties the vacation policy was formulated by various county officers with the approval of the boards of county commissioners. See Opinion No. 225, Vol. 20, Opinion No. 398, Vol. 15 and Opinion No. 220, Vol. 19, Official Opinions of the Attorney General. Prior to the 1949 Act the employee had no absolute right to any vacation, and 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 su-

pervisory 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, but the employee is not entitled to such vacation leave or separation pay as a matter of right unless he shall have been in continuous service of the county for one year."

It is, therefore, my opinion that a truant officer appointed by a school board of trustees is not entitled as a matter of right to a vacation with pay in the absence of one year's continuous service.

It is further my opinion that a school board of trustees has the power to grant a vacation with pay to a truant officer who has not been in continuous employment of the school district for one year.