

**SCHOOLS AND SCHOOL DISTRICTS: Employees Vacation Leave—
Continuous Employment and Service—Section 59-1001, R.C.M. 1947.**

- HELD:**
- 1. School district employees must be continuously employed for one year before they are entitled to vacation leave as a matter of right.**
 - 2. School Boards possess discretionary authority to grant vacation leave to employees who have not been continuously employed for one year.**

May 19, 1965

Mr. Robert J. Boyd
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Boyd:

You have requested my opinion as to whether school district employees, such as stationary engineers, janitors and cooks, who are hired on a ten month basis, accrue vacation leave as a matter of right under section 59-1001, R.C.M. 1947, and if such leave does not so accrue, may the school board grant such leave in its discretion?

The original act which granted an annual vacation leave to the employees of the state, city or county, was enacted as Chapter 131, Laws of 1949, and in Section 1 thereof provided:

"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."

In 1951 the legislature conditioned the exercise of this right when, through the enactment of Chapter 152, Laws of 1951, it amended Section 1 by adding the bold face language as follows:

"Section 1. 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 (1¼) working days for each month of service."

The effect of this amendment, in my opinion, was to require that each employee, before he became entitled to annual vacation leave,

as a matter of right, perform a period of service, characterized as a certain amount of time, as an employee of the state, city or county. This phrase "continuous employment and service . . . for a period of one (1) year . . .", inserted in the statute by the 1951 legislature, has reference to the continuity of employment in the light of its regularity over a period of time. The obvious intent of the 1951 amendment was to prohibit temporary employees, i.e., employees who have not been in continuous service for one year, from receiving a vacation allowance. Continuous employment means the employment has not been discontinued for one year or more.

In 26, Opinions of the Attorney General, Number 80, it was held that:

"To be eligible for vacation leave an employee must be employed for a period of one year and until that period of service is reached, the right to vacation leave does not vest. However, once the condition precedent, service of one year, is met, all rights accumulated during the one year period vest, and the employee is entitled thereto as a matter of right. ****"

Therefore, it is my opinion that school district employees, such as stationary engineers, janitors and cooks, who are hired on a ten month basis, do not accrue vacation leave as a matter of right under section 59-1001, R.C.M. 1947, because their employment does not continue for a period of one (1) year as required by the condition inserted in the statute by the 1951 legislature.

However, this does not preclude the school board from exercising its discretionary authority and power to grant vacation leave to an employee who has not been in continuous employment for one year and therefore is not entitled to vacation leave as a matter of right. See 25, Opinions of the Attorney General, Number 73, and 27, Opinions of the Attorney General, Number 85. (Volumes No. 25 and 27.)

Very truly yours,

FORREST H. ANDERSON
Attorney General

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