

UNIVERSITY SYSTEM - Employees, vacation leave. Sections 59-1001 through 1007, R.C.M. 1947.

- HELD:**
- 1. Administrative employees of the Montana university system are governed by the provisions of section 59-1001, R.C.M. 1947, relating to vacation leave.**
 - 2. Teachers employed by the Montana university system are not governed by the provisions of section 59-1001, R.C.M. 1947, relating to vacation leave.**
 - 3. An administrative employee of the Montana university system hired on a ten-month contract basis is not entitled as of right to vacation leave.**
 - 4. The board of regents does not have the authority to grant vacation leave to employees who come within the provisions of section 59-1001, R.C.M. 1947, at a schedule any different from that set forth in said statute.**
 - 5. The board of regents does have the authority to grant vacation leave to teaching personnel for any reasonable amount of time.**

March 18, 1971

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion on the following questions regarding the Montana University System:

- 1. Do administrative personnel (**non-teaching** personnel) fall within the definition of a state employee for the purposes of vacation leave under section 59-1001, R.C.M. 1947?**
- 2. Do the professors, instructors and other teaching personnel fall within the definition of a state employee for the purposes of vacation leave under this section?**
- 3. Are ten-month contract employees, under the assumption they are an employee, eligible for vacation leave under this section, or are they not in continuous service for one year?**

4. Do the board of regents have authority vested in them to grant vacation leave to employees who fall under section 59-1001 through 1007, R.C.M. 1947, at a rate any different from the schedule under section 59-1001, R.C.M. 1947?
5. Do the board of regents have authority vested in them to grant vacation leave to an employee of the university who may not be an employee per section 59-1001 through 1007, R.C.M. 1947, and if so, at what rate may they grant the leave?

Your questions involve an interpretation of section 59-1001, Revised Codes of Montana, 1947. That section provides in part:

“(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 according to the following schedule:***”

In your first two questions you ask whether administrative personnel (non-teaching personnel) and teaching personnel come within the definition of state employee for the purposes of the vacation statute, section 59-1001, R.C.M. 1947. The units of the Montana university system are governed by the board of regents, which in turn is governed by the constitution and statutes of Montana. Employees of the university units are paid by appropriations from the legislature. The essential elements of control and payment of salaries emanate from the state. Consequently, it is reasonable to conclude that administrative personnel and teaching personnel of the units of the university system are employees of the state.

Section 59-1007, R.C.M. 1947, provides that the term “employee” for the purposes of section 59-1001, R.C.M. 1947, does not refer to or include “elected state, county or city officials or school teachers”. Since both administrative personnel and teaching personnel are state employees, they come within the requirements of section 59-1001, R.C.M. 1947, unless exempted by section 59-1007, R.C.M. 1947. The language of the statute clearly states that administrative personnel are not exempted by the provisions of section 59-1007, R.C.M. 1947. Therefore, in answer to your first question, administrative personnel are governed by the provisions of section 59-1001, R.C.M. 1947.

However, it is possible that the exemption for “school teachers” was intended to include teaching personnel in the university system. In **Murphy v. Worcester, Consul. St. Py. Co.**, 199 Mass. 2799, 85 N.E. 507, the court said that the word “schools” is one of broad signification, and sometimes it may appear, by the connection in which it is used, to include higher institutions of learning.

Teaching personnel in the university system are hired on a contract basis for a fixed term. In addition such personnel are governed by the university holiday schedule which results in numerous days when classes are not held due to student vacations. You also advise that the university administrators have considered teaching personnel not to come within the terms of section 59-1001, R.C.M. 1947. Long-standing and reasonable executive construction of a statute should be given considerable weight. **Miller Ins. Agency v. Porter**, 93 Mont. 567, 20 P.2d 643. The foregoing provides a sufficient basis for distinguishing between teaching personnel in the university system and other state employees. Therefore, in answer to your second question, it is my opinion that teaching personnel in the Montana university system should not be considered state "employees" for the purposes of section 59-1001, R.C.M. 1947.

In your third question you ask whether ten-month contract employees are eligible for vacation leave under section 59-1001, R.C.M. 1947, which requires one year of continuous service. You advise that many of the administrative personnel are hired on a ten or eleven month contract basis. The vacation statute provides some difficulties since technically some administrative personnel would never qualify for vacation leave. However, in fairness to such administrative employees, consideration should be given to pro-rating vacation credit or to allowing the vacation credit without the continuous twelve month requirement. This would be an administrative decision based on the nature of work, the length of the interrupted period, and the intention of the employee to remain with the university system. In 31 **Opinions of the Attorney General**, opinion number 2, it was held that school district employees, who are hired on a ten month basis do not accrue vacation leave as a matter of right, but a school board is not precluded from exercising its discretionary authority to grant vacation leave to a person who has not been in continuous employment for one year. Therefore, it is my opinion that the board of regents has the discretionary authority to grant vacation leave to administrative personnel who have not been in continuous employment for one year.

In your fourth question you ask whether the board of regents has the authority to grant vacation leave to employees who come within section 59-1001, R.C.M. 1947, at a rate any different from the schedule set forth in said statute. It is a well-settled rule of administrative law that a public agency or board has the power to do only that which is expressly granted to it by law. **State v. State Board of Equalization**, 133 Mont. 8, 319 P.2d 221 (1957). Since section 59-1001, R.C.M. 1947, establishes the amount of vacation leave available to public employees, that is the only amount authorized.

In your final question you ask whether the board of regents has authority to grant vacation leave to an employee who is exempted by the provisions of section 59-1007, R.C.M. 1947. The laws of Montana, sections 75-107 and 75-403, R.C.M. 1947, grant general control and supervision over the faculty to the board of regents. The regents are also given authority to hire faculty members, which is done on a contract basis. Based on the foregoing, it is my opinion that the regents have sufficiently broad power to grant vacation leave to teaching personnel for any reasonable amount of time.

THEREFORE, IT IS MY OPINION that:

1. The administrative employees of the Montana university system are governed by the provisions of section 59-1001, R.C.M. 1947, relating to vacation leave.
2. The provisions of section 59-1001, R.C.M. 1947, relating to vacation leave do not govern teachers in the Montana university system.
3. An administrative employee of the Montana university system, hired on a ten-month contract basis, is not entitled to any vacation leave as a matter of right.
4. The board of regents does not have the authority to grant vacation leave to employees who come within the provisions of section 59-1001, R.C.M. 1947, at a schedule any different from that set forth in said statute.
5. There is authority for the board of regents to grant vacation leave to teaching personnel for a reasonable period of time.

Very truly yours,

ROBERT L. WOODAHL
Attorney General