

VOLUME NO. 34

Opinion No. 28

PUBLIC EMPLOYEES - Accumulation of vacation leave. Section 59-1002, R.C.M. 1947.

HELD: Public employees may accumulate annual vacation leave in excess of thirty (30) working days in any one calendar year provided that such excess over thirty (30) days may not be carried past the last day of the calendar year.

December 8, 1971

Mr. Theodore P. Cowan
Deputy County Attorney
Fergus County
Lewistown, Montana 59457

Dear Mr. Cowan:

You have requested my opinion concerning the question of whether a public employee may accumulate more than thirty working days of annual leave in any one year.

In answering the question, reference is made to section 59-1002, Revised Codes of Montana, 1947, as amended by section 3 of Chapter 121, Laws of 1971. Prior to this latest amendment section 59-1002, R.C.M. 1947, read as follows:

“Annual vacation leave may be accumulated to a total not to exceed thirty (30) working days.”

The 1971 amendment to this section added the phrase at the end:

“ . . . as of the last day of any calendar year.”

The 1971 addition to this section of Montana law would indicate that the legislature intended to change or modify what had existed previously. In the prior law there was an absolute prohibition against any accumulation of annual vacation leave in excess of thirty days. The new amendment would indicate an intention on the part of the legislature to apply the limitation only at the close of the calendar year. Thus, an employee would be able to accumulate annual vacation leave during any given calendar year in excess of thirty days, but would not be allowed to carry such excess accumulated leave over into the next year.

The following example should illustrate the working of this section of Montana law:

A public employee who on January 1, 1971, has accumulated thirty days of annual vacation leave computed at the rate of fifteen days per year will have by December 30, 1971, accumulated forty-five days of annual vacation leave if he takes no vacation during the calendar year. However, on January 1, 1972, the employee's accumulated annual vacation leave would again be thirty days. If the employee is separated from service as provided in section 59-1003, R.C.M. 1947, on December 30, 1971, he would receive compensation for unused vacation leave based on forty-five days accumulated leave. If the same employee were separated from service on January 1, 1972, his unused vacation leave compensation pay would be based on thirty days.

THEREFORE, IT IS MY OPINION that a public employee may accumulate more than thirty (30) working days of annual vacation leave in any one calendar year, but such excess over thirty (30) days may not be carried past the end of the calendar year.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

RLW:dm