

VOLUME NO. 36

Opinion No. 22

PUBLIC EMPLOYEE — Leave — Reserve Training Sessions; Section 77-2104.

HELD: Section 77-2104, Revised Codes of Montana 1947, requires that state, city or county employees be allowed leave of absence with pay for annual military training sessions, regardless of

whether the employee has fulfilled all mandatory military service and reserve obligations and has extended his service by a contract of re-enlistment or continuation of service. The leave taken may not be charged against annual vacation time.

September 8, 1975

Mr. Sidney T. Smith
Commissioner of Labor and Industry
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Smith:

You have requested my opinion on the following question:

Is a state, city, or county employee who has fulfilled all mandatory requirements of active and reserve service to the United States, but who has contracted to continue his status as a member of the National Guard or the reserve forces of the United States entitled to receive leave of absence with pay, and without the leave being charged against annual vacation time, while attending reserve training sessions?

In regard to your question, section 77-2104, Revised Codes of Montana 1947, as amended, provides:

A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States, and who has been an employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

When the terms of a statute are plain, unambiguous and direct on their face, it is not the function of a court of law to legislate a contrary and different meaning. **State ex rel. Federal Land Bank v. Hays**, 86 Mont. 58, 66; 282 P. 32 (1928).

Applying this rule to the above-cited statute indicates that the legislature intended to provide state, city or county employees leave of absence from their civilian duties without loss of either pay or annual vacation time for attending annual military training.

The relief provided by Section 77-2104 is not qualified by the form of obligation being served. Relief is not made to turn on whether the employee is fulfilling mandatory requirements of active and reserve service or has elected to continue his military status by contractual agreement. Benefits accrue to persons who have been employed by the state, city or county for longer than six months and are members of the organized state militia or the organized or unorganized reserve corps or military forces of the United States.

This conclusion is supported by an examination of the remaining chapters of Title 77 of the Revised Codes of Montana 1947, which reveal that no differentiation is made between persons serving out mandatory military requirements or continuing service under a contract of service.

THEREFORE, IT IS MY OPINION:

Section 77-2104, Revised Codes of Montana 1947, requires that state, city or county employees be allowed leave of absence with pay for annual military training sessions, regardless of whether the employee has fulfilled all mandatory military service and reserve obligations and has extended his service by a contract of re-enlistment or continuation of service. The leave taken may not be charged against annual vacation time.

Very truly yours,
ROBERT L. WOODAHL
Attorney General