

VOLUME NO. 37

OPINION NO. 102

HOSPITAL DISTRICTS - Subdivisions of the county; HOSPITAL DISTRICTS - Employees entitled to vacation and sick leave benefits same as county employees; COUNTY GOVERNMENT - Hospital Districts as subdivision thereof; REVISED CODES OF MONTANA, 1947 - Sections 59-1001 and 59-1008.

HELD: Under section 59-1001 et seq., R.C.M. 1947, employees of county hospital districts are employees of a subdivision of the county and are therefore entitled to receive the vacation and sick leave benefits provided public employees.

26 December 1977

David E. Fuller, Commissioner
Department of Labor & Industry
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Fuller

You have requested my opinion concerning the following question:

Are employees of county hospital districts entitled to receive sick and annual leave benefits as set forth in sections 59-1001 through 59-1008, R.C.M. 1947?

Section 59-1001 provides in pertinent part:

Annual Vacation Leave

(1) Each full time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment.

Section 59-1008 provides:

Sick Leave

(1) Each full time employee of the state or of any county or city thereof is entitled to and shall earn sick leave credits from the first full pay period of employment.

To qualify for vacation and sick leave benefits under the above provisions, an individual must be an employee of the state, county, or city. Section 59-1007.1(2) defines employee as "...any person employed by the state, county or city government."

An employee of a subdivision of the state or county is considered, for the purpose of this chapter, to be an employee of the governmental unit involved. Teamsters Local #45 v. Cascade County School District #1, 162 Mont. 227, 511 P.2d 339 (1973); See also Longpre v. School District No.2, 151 Mont. 345, 443 P.2d 1; Fitzpatrick v. State Board of Examiners, 105 Mont. 234, 70 P.2d 285.

The answer to your question depends upon whether or not county hospital districts are political subdivisions of the county. The statutes concerning hospital districts are codified in section 16-4301, et seq., R.C.M. 1947. Each district may encompass all or a portion of a particular county. They are established by vote of the district residents and are financed by public funds in the form of a property tax levied upon the property within the district. Hospital districts are governed by a board of trustees who have administrative power and authority under section 16-4308. Among other powers, that section gives the district authority to:

- (1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon.

Although hospital districts are relatively autonomous, it is my opinion that they are political subdivisions of the county for the purposes of sections 59-1001 through 59-1008.

Sections 16-4302 through 16-4307 provide the board of county commissioners an integral role in the formation of hospital districts. A petition for the establishment of the district is first directed to the board of county commissioners and the board then conducts a hearing. The board may make boundary changes in the proposed district before calling for an election. After the voters have approved a proposed hospital district, it is then incumbent upon the board to organize the district, call for the election of trustees, and in certain instances the board of county commissioners has authority to appoint individuals as district trustees.

County commissioners have exclusive authority to levy taxes for the maintenance of a hospital district. Section 16-4309 provides in pertinent part:

The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees.

Section 16-4310 provides that the county treasurer shall be the treasurer for the hospital district and maintain a detailed account of all tax monies paid into the account. The board of county commissioners administers the procedure for withdrawal of a portion of the district as well as the annexation and dissolution procedures of the district. Section 16-4313 further provides:

...any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall become the property of the county.

By virtue of the relationship between the county and the district, it is clear that a hospital district is a subdivision of the county, created to provide the public with hospital service.

In an analagous situation, the Montana Supreme Court in Teamsters Local #45 v. Cascade County School District No. 1, supra, held that school district employees, other than teachers, were entitled to vacation benefits under section 59-1001. In its decision the Court gave effect to a long line of Montana cases holding that a school district is a political subdivision and instrumentality of the state. In construing section 59-1001 the court went on to say at p.280:

The legislature used the term employees in its generic sense to include all employees of the state or employees of state agencies of which a school district is included.

Significantly, section 16-4307 provides that elections for hospital district trustees are to be conducted in the same manner as elections for school district trustees.

35 OP. ATT'Y GEN. NO. 71, held that a fire district is a subdivision of the county and that therefore employees of the fire district were entitled to vacation and sick leave benefits under section 59-1001, et seq. R.C.M. 1947. That opinion states:

The plain, ordinary meaning of the language in sections 59-1001 through 59-1009 indicates an obvious legislative intent to provide vacation and sick leave benefits to all public employees.

Employees of hospital districts are public employees who receive their compensation from public funds, and it has been held in other jurisdictions that employees who are paid with public funds are employees of the state or subdivisions thereof. Industrial Commission of Ohio v. Saner, 127 Ohio 366, 188 N.E. 559.

The statutes in question confer benefits upon "an employee of the state, or any county or city thereof." As hospital district employees are public employees of a political subdivision of the county, they are entitled to vacation and sick leave benefits as set forth in the above provisions.

THEREFORE, IT IS MY OPINION:

Section 59-1001 et seq., R.C.M. 1947, employees of county hospital districts are employees of a subdivision of the county and are therefore entitled to receive the vacation and sick leave benefits provided public employees.

Very truly yours,

MIKE GREELY
Attorney General