

VOLUME NO. 37

OPINION NO. 44

CONTRACTS - Public employment, provision for extra pay for working on holidays includes substitute days off under section 59-1009, R.C.M. 1947; HOLIDAYS - Public employment contract provisions for extra pay for working on holidays includes substitute days off under section 59-1009, R.C.M. 1947; PUBLIC EMPLOYEES - Employment contracts, provisions for extra pay for working on holidays includes substitute days off under section 59-1009, R.C.M. 1947. REVISED CODES OF MONTANA, 1947 - Section 59-1009.

HELD: An employment contract providing that public employees are entitled to extra pay for working on a paid holiday applies fully to employees called to work on the day they were to have off in place of a holiday under section 59-1009, R.C.M. 1947.

6 July 1977

Kenneth R. Wilson. Esq.
Miles City Attorney
Miles City, Montana 59301

Dear Mr. Wilson:

You have requested my opinion on the following question:

When an employment contract provides that public employees are entitled to extra pay for working on a paid holiday, does this provision extend to employees called to work on the day they were to have off in place of a holiday under section 59-1009, R.C.M. 1947?

Section 59-1009, R.C.M. 1947, provides:

Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

This section has been interpreted by a Montana Attorney General's opinion as follows:

State, county and city employees, who are regularly scheduled to work Monday through Friday, are entitled to the benefits of section 59-1009, R.C.M. 1947, and shall have off the Friday preceding a legal holiday falling on Saturday, or the Monday following a legal holiday falling on Sunday.

34 OP. ATT'Y GEN. NO. 27 (1971).

The opinion clarifies the fact that the statute has created a substitute day off whenever a legal holiday falls on a weekend. The question is whether this substitute day off is a "holiday" as that word is used in contracts promising extra compensation to employees called to work on a holiday. The Montana Supreme Court has not defined "holiday," but a California opinion provides a standard definition:

That term is defined in 29 C.J. 761, as follows:

- (1) a consecrated day, a religious festival,
- (2) a day on which the ordinary occupations are suspended, a day of exemption, i.e., cessation from work, a day of festivity, recreation, or amusement; and a legal holiday is a day designated and set apart by legislative enactment for one or more of such purposes.

Vidal v. Backs, 218 Cal. 99, 21 P.2d 952, 955 (1933) (emphasis added). According to this definition, section 59-1009, R.C.M. 1947, creates a legal holiday for public employees since "a day of exemption, i.e., cessation from work..." is "designated and set apart by legislative enactment...."

It is true that this holiday for public employees is not a general holiday, but the Legislature can create a holiday for limited classes or purposes. Thus in Vidal a bank holiday was held not to be a judicial holiday, 21 P.2d at 955, but it was still a holiday for all banking purposes. The Illinois Supreme Court has also confronted the issue of limited holidays:

Moreover, Lincoln's Birthday is not a holiday in this state so far as the performance of judicial functions is concerned. It is made a legal holiday by statute in this state for certain purposes in regard to negotiable instruments. The rule is that, if a day be made a holiday for purposes stated in the statute creating it, it is not a legal holiday for any purpose not named in the statute.

Richter v. Chicago & E.R. Co., 273 Ill. 625, 113 N.E. 153, 154 (1916). Thus the day off provided by section 59-1009, R.C.M. 1947, is not a holiday for any purposes beyond those of public employment, but for those limited purposes it is a holiday.

If public employees enter into an employment contract which uses the word "holiday," the term includes those holidays created by section 59-1009, R.C.M. 1947. The Montana Supreme Court has held that "[t]he laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms." Valier Co. v. State, 123 Mont. 329, 341, 215 P.2d 966, cert. denied, 340 U.S. 827, 95 L.Ed. 607, 71 S.Ct. 63 (1950). The fact that contracts incorporate existing law was maintained even more forcefully in a later opinion: "The law controlling a written contract becomes a part of it, and cannot be varied by parol any more than what is written." Ryan v. ALD, Inc., 146 Mont. 299, 302, 406 P.2d 373 (1965).

Under these decisions section 59-1009, R.C.M. 1947, is a part of any public employment contract which mentions "holidays." Therefore, if such a contract provides for extra compensation for employees called to work on a holiday, the employees are entitled to the same extra compensation if they are called to work on their substitute day off.

THEREFORE, IT IS MY OPINION:

An employment contract providing that public employees are entitled to extra pay for working on a paid holiday applies fully to employees called to work on the day they were to have off in place of a holiday under section 59-1009, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General