

VOLUME NO. 38

OPINION NO. 12

APPOINTMENT - Public office, effect on county employees' rights to accumulated leave benefits;  
COUNTY EMPLOYEES - Entitlement to accumulated leave benefits upon election or appointment to county office;  
ELECTION - Public office, effect on county employees' rights to accumulated leave benefits;

LEAVE BENEFITS - Right of county employees to accumulated leave benefits when elected or appointed to public office;  
PUBLIC OFFICE - Appointment or election, effect on right of county employees to accumulated leave benefits;  
MONTANA CODE ANNOTATED - Sections 2-8-601(2), 2-18-611, 2-18-617, 2-18-618, 2-18-620, 7-4-2203.

HELD: County employees who are elected or appointed to public offices of the State, county, or city are entitled to receive accumulated vacation and sick leave benefits, as provided in sections 2-18-617 and 2-18-618(5), MCA, unless they fall within the mandatory leave provision of section 2-18-620.

7 March 1979

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

Are county employees who are elected or appointed to public office entitled to receive vacation and sick leave benefits accumulated during the course of their employment with the county?

Sections 2-18-611 and 2-18-628, MCA (sections 59-1001 and 59-1008, R.C.M. 1947), provide for sick leave and annual vacation leave credits for employees of the State or any county or city thereof. Such employees may accumulate their leave credits and, upon termination of employment, receive payment for unused vacation leave and accrued sick leave credits. §§ 2-18-617 and 2-18-618(5), MCA (§§ 59-1002, 59-1003, 59-1008(1), (5), R.C.M. 1947). The question presented here is whether county employees may collect accumulated leave benefits when they are elected or appointed to public office--that is, whether the assumption of public office constitutes a termination of employment under sections 2-18-617 and 2-18-618(5), MCA.

Section 2-18-601(2), MCA (section 59-1007, R.C.M. 1947), specifically states that the term "employee," as used in the section on leave time, does not include elected state, county, or city officials, or school teachers. Although the statute does not specifically mention persons appointed to

public office, the logical interpretation of section 2-18-601(2) is that its definitional exclusion refers to the nature of the office held, rather than to the means of selection. For example, persons appointed to fill midterm vacancies in elective offices must logically be viewed as "elected officials," although they may never have run for office. Similarly, those county officers who, according to section 7-4-2203, MCA (section 16-2406, R.C.M. 1947), may be either appointed or elected, have the status of elected officials, regardless of the method chosen for their selection. Therefore, it is my opinion that section 2-18-601(2) excludes all state, county and city officers having the legal status of elected officials from the definition of "employee" as used in part 6 of chapter 18.

Termination of employment means the termination of status as an employee. Because the definition of employee for purposes of employee leave benefits specifically excludes elected public officials and certain appointed officials, the assumption of those offices automatically terminates a person's previous status as an employee, unless that person falls within the 180-day mandatory leave provision of section 2-18-620, MCA (section 59-1011, R.C.M. 1947). Therefore, a former county employee who takes office as an "elected official" thereupon "terminates his employment" within the meaning of sections 2-18-617 and 2-18-618(5), MCA, and is entitled to receive sick and vacation leave benefits accumulated during his employment.

THEREFORE, IT IS MY OPINION:

County employees who are elected or appointed to public offices of the state, county, or city are entitled to receive accumulated vacation and sick leave benefits, as provided in sections 2-18-617 and 2-18-618(5), MCA, unless they fall within the mandatory leave provision of section 2-18-620.

Very truly yours,

MIKE GREELY  
Attorney General