

VOLUME NO. 38

OPINION NO. 16

HOLIDAYS - Entitlement of public employees to paid days off on legal holidays;  
HOSPITAL DISTRICTS - Entitlement of hospital district employees to paid days off for legal holidays;  
EMPLOYEES, PUBLIC - Holidays and vacation days;  
MONTANA CODE ANNOTATED - Sections 1-1-216, 2-18-603, 2-18-611, 2-18-612, 2-18-614, 2-18-624, 20-1-305;  
REVISED CODES OF MONTANA - Sections 19-107, 59-1001, 59-1009, 75-7406.

- HELD: 1. Section 2-18-603, MCA (section 59-1009, R.C.M. 1947), which generally entitles each State, city and county employee to a day off on the day preceding or following a holiday which falls on the employee's regular day off, is applicable to full-time salaried employees of a county hospital district.
2. A public employee may be required to work on a holiday or its complement under section 2-18-603, MCA (section 59-1009, R.C.M. 1947). However, a public employee who works a holiday or its complement must be either compensated for the lost holiday or given an opportunity to take a paid day off at a later time.
3. Vacation and holiday leave time for public employees are cumulative. If a holiday or its complement under section 2-18-603, MCA (section 59-1009, R.C.M. 1947) falls during a public employee's annual vacation, that day should not be counted against the employee's leave time; if counted against leave time the employee must be given a paid day off at a later time to make up for the lost holiday.

4. The holiday provisions of section 2-18-603, MCA (section 59-1009, R.C.M. 1947), apply to full-time, salaried public employees. They do not apply to part-time, temporary or seasonal employees who are paid on an hourly or per diem basis for work actually performed.

3 May 1979

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Gentlemen:

Each of you has requested an opinion concerning paid holidays for public employees. I have stated your questions as follows:

1. Are employees of a county hospital district considered "State" or "county" employees under the provisions of section 2-18-603, MCA (section 59-1009, R.C.M. 1947), which entitle each State, city and county employee to a day off on the day preceding or following a holiday which falls on the employee's regular day off?
2. Is a public employee who works on a holiday, or works on a complementary day which he is entitled to take off in lieu of a holiday entitled to an additional day's pay for the holiday or its complement?
3. Where a holiday falls during a public employee's regularly scheduled annual vacation, is he entitled to an additional day off?
4. Do the holiday provisions of section 2-18-603, MCA (section 59-1009, R.C.M. 1947), apply to part-time, temporary and seasonal public employees?

Your questions involve interpretation of section 2-18-603, MCA (section 59-1009, R.C.M. 1947), which provides:

Any employee 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.

That section is facially ambiguous and has been the subject of several prior Attorney General opinions. E.g., 34 Op. Att'y Gen. No. 27 (1971); 36 Op. Att'y Gen. No. 105 (1976); and 37 Op. Att'y Gen. Nos. 96 and 150. In the first instance, it is dependent upon other statutory provisions for a definition of holidays. In the case of school district employees, holidays are defined in section 20-1-305, MCA (section 75-7406, R.C.M. 1947). For other public employees, holidays are defined in section 1-1-216, MCA (section 19-107, R.C.M. 1947). 37 Op. Att'y Gen. No. 150 (1978). Secondly, the section does not expressly state that public employees are entitled to days off on holidays but prior Attorney General opinions have found such entitlement implicit in the section. "If the legislature mandates a day off for state employees when a legal holiday happens to fall on a weekend, surely the same is true when a holiday falls during the week." 35 Op. Att'y Gen. No. 105, at 551 (1976).

The questions presented here further illustrate the ambiguity of section 2-18-603. The section makes no express provision with respect to any of the questions. In answering the questions, I am therefore guided by several general rules of statutory construction. First, the apparent objects sought to be achieved by the Legislature through section 2-18-603 are a prime consideration in interpreting the section. Corwin v. Bieswanger, 126 Mont. 337, 340, 251 P.2d 232 (1952). Second, the construction adopted should not lead to absurd results if a reasonable construction is available. State ex rel. Ronish v. School District No. 1, 136 Mont. 449, 460, 348 P.2d 797 (1960). Third, since the statute is vague and ambiguous, the consequences of a proposed construction may be considered to avoid objectionable or absurd results. State ex rel. Griffin v. Butte, 151 Mont. 546, 549, 445 P.2d 739 (1968). Finally, the meaning of the section must be gleaned by examining the overall purpose of the act rather than from an isolated clause or sentence. In re Senate Bill No. 23 v. Lamoreaux, 168 Mont. 102, 109, 540 P.2d 975 (1975).

I. APPLICABILITY OF SECTION 2-18-603, MCA, TO EMPLOYEES OF A COUNTY HOSPITAL DISTRICT.

As originally enacted, section 2-18-603, MCA, referred to "any employee of the state of Montana, or any county or city thereof \*\*\*." 1977 Mont. Laws. ch. 108, § 1. In recodification, reference to state, county and city government has been deleted. The section has been placed in the same chapter as annual and military leave provisions, and a comprehensive definitional section has been supplied for the chapter. For purposes of the chapter, "employee" is defined in the equivalent terms as provided in the original enactment of section 2-18-603, being "any person employed by the state, county, or city government."

In 37 Op. Att'y Gen. No. 102, I determined that reference to "state, county and city employees" in annual vacation and sick leave provisions included employees of a county hospital district. That conclusion was compelled by Teamsters Local No. 45 v. Cascade County School District No. 1, 162 Mont. 227, 511 P.2d 339 (1973), when the Montana Supreme Court considered the vacation leave provisions of section 59-1001, R.C.M. 1947 (recodified as sections 2-18-611, 612, 614 and 621, MCA). The Court held that in referring to "State," "county" and "city" employees: "The legislature used the term employees in its generic sense to include all employees of the state or state agencies of which a school district is included." While section 2-18-603 was separately enacted by the Legislature, it uses the same reference to employees of the "state, county and city" as used in the vacation and sick leave statutes. The rationale of Opinion No. 102 and Teamsters Local No. 45 is equally applicable to section 2-18-603 and it is my opinion full-time salaried employees of a county hospital district are entitled to the benefits provided by that section.

II. APPLICATION OF SECTION 2-18-603, MCA, WHERE A PUBLIC EMPLOYEE WORKS ON A LEGAL HOLIDAY OR WORKS A DAY WHICH HE WOULD OTHERWISE BE ENTITLED TO TAKE OFF UNDER SECTION 2-18-603.

The plain and obvious purpose of section 2-18-603 is to give public employees paid days off on specified holidays or days in lieu of those holidays. It is equally obvious, however, that not every public employee can be given his or her day off on every holiday or its complement under section 2-18-603. Most public offices may be closed to accommodate a holiday or its complement, 34 OP. ATT'Y GEN. NO. 27 (1971), but essential governmental operations, such as law enforcement and hospital services, must continue notwithstanding the holiday. It would be an absurd and unreasonable construction of section 2-18-603 to interpret it as requiring that all governmental services be suspended on holidays so that all public employees can have the same day off. Section 2-18-603 therefore does not forbid a governmental body from requiring employees to work on holidays or holiday complements. However, if an employee is required to work a holiday or its complement, he must be either compensated for the lost holiday or given an opportunity to take a paid compensatory day off at some other time. This requirement follows from the overall purpose of section 2-18-603, to give public employees a specific number of paid days off each year which correspond to specific holidays.

Whether the employee receives additional compensation for a working holiday or is given a different day off is in the sound discretion of the employing governmental body. However, the employee may not unilaterally determine which of the two alternatives his employer must pursue. If the



employing governmental body directs the employee to take a different day off in lieu of the holiday and the employee refuses, the governmental body is not required to compensate the employee for the lost holiday. If, however, the employing governmental body agrees to allow the employee to work without taking a compensatory day off, it must pay him for that additional day.

### III. HOLIDAYS FALLING DURING A PUBLIC EMPLOYEE'S REGULARLY SCHEDULED ANNUAL VACATION.

Since the purpose of section 2-18-603 is to give public employees a fixed number of paid days off corresponding to legal holidays, the entitlement to a day off for a holiday cannot be lost merely because the holiday falls during the employee's regularly scheduled vacation. Vacation and holiday leave are cumulative. Therefore, if a holiday or its section 2-18-603 complement falls during an employee's annual vacation, that day should be counted against the employee's holiday time and not against leave time. In the alternative, the day of the holiday or its complement could be counted against vacation leave time if the employee is allowed to take a paid day off at some future time to make up for the lost holiday. In any event, the employee should not lose a day off for a holiday merely because the holiday falls during his annual vacation.

### IV. PART-TIME, TEMPORARY AND SEASONAL PUBLIC EMPLOYEES.

Section 2-18-603 does not facially distinguish among part-time, permanent and temporary employees. However, "employee" cannot be isolated from the context of the section. The section refers specifically to days off "in addition to the employee's regularly scheduled days off." Reference to an employee's regular days off is commonly used in connection with full-time, salaried employees. From the context of the statute it is therefore my opinion that the holiday provisions refer to such full-time, salaried employees and has no application for part-time, temporary or seasonal employees who are paid on a per diem or hourly basis for work actually performed and who are not generally entitled to paid holidays off.

### THEREFORE, IT IS MY OPINION:

1. Section 2-18-603, MCA (section 59-1009, R.C.M. 1947), which generally entitles each State, city and county employee to a day off on the day preceding or following a holiday which falls on the employee's regular day off, is applicable to full-time salaried employees of a county hospital district.

2. A public employee may be required to work on a holiday or its complement under section 2-18-603, MCA (section 59-1009, R.C.M. 1947). However, a public employee who works a holiday or its complement must be either compensated for the lost holiday or given an opportunity to take a paid day off at a later time.
3. Vacation and holiday leave time for public employees are cumulative. If a holiday or its complement under section 2-18-603, MCA (section 59-1009, R.C.M. 1947), falls during a public employee's annual vacation, that day should not be counted against the employee's leave time; if counted against leave time the employee must be given a paid day off at a later time to make up for the lost holiday.
4. The holiday provisions of section 2-18-603, MCA (section 59-1009, R.C.M. 1947), apply to full-time, salaried public employees. They do not apply to part-time, temporary or seasonal employees who are paid on an hourly or per diem basis for work actually performed.

Very truly yours,

MIKE GREELY  
Attorney General