

VOLUME NO. 38

OPINION NO. 70

SALARIES - Effective date of pay matrix for state employees in new fiscal year;

SICK LEAVE - Computation of compensation for unused sick leave for employees terminated on June 30, 1979;

VACATION - Computation of compensation for unused annual leave for employees terminated on June 30, 1979;

MONTANA CODE ANNOTATED - Sections 2-18-303, 2-18-311, 2-18-312, 2-18-617(2), 2-18-618(5).

HELD: 1. The State Central Payroll Division may apply the pay matrix for fiscal 1980 in issuing pay checks covering the pay period from June 30, 1979 to July 13, 1979, inclusive.

2. A state agency with a monthly payroll may apply the new pay matrix to the pay period beginning June 30, 1979.
3. Sick or annual leave for employees terminated as laid off on June 30, 1979 should be computed on the basis of the pay matrix in effect on that date.
4. The first pay period of fiscal year 1981 begins June 29, 1980.

3 March 1980

E. V. "Sonny" Omholt
State Auditor
S. W. Mitchell Building
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David M. Lewis, Director
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Dear Sirs:

You have requested my opinion on four interrelated questions concerning the effective date of pay increases for state employees. Your questions are as follows:

1. May the State Central Payroll Division apply the pay matrix for fiscal 1980 in issuing pay checks covering the pay period from June 30, 1979 to July 13, 1979, inclusive?
2. May state agencies with a monthly payroll apply the new pay matrix to the pay period beginning June 30, 1979?
3. Which pay matrix applies to compute compensation for unused sick and annual leave for employees terminated or laid off on June 30, 1979?
4. On what date does the first pay period of fiscal 1981 begin?

The pay matrices provided in sections 2-18-311 and 2-18-312, MCA, establish the annual compensation for the fiscal years

ending June 30, 1980 and June 30, 1981 respectively. § 2-18-303(1),(2), MCA. The pay matrices generally reflect increases in annual salary for each corresponding grade and step. For example, an employee at Grade 1, Step 1 receives compensation of \$5,892 under the fiscal year 1980 matrix set forth in section 2-18-311, MCA, while he or she would receive \$6,412 under the matrix for fiscal year 1981 set forth in section 2-18-312, MCA, exclusive of seniority step increases or other salary adjustments.

Your questions deal with the effective date of the salary increases incurred when the payroll is shifted from one matrix to another. Section 2-18-303(1)(d), MCA, provides:

(i) The compensation of each employee on the first day of the first pay period in fiscal year 1980 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1979.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1981 shall be that amount which corresponds to the grade and step occupied on the last day of fiscal year 1980.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1980 or 1981, as the case may be, he will advance one step on the first day of that pay period.

Under this provision, the new pay matrix becomes effective on "the first day of the first pay period in" the fiscal year. Fiscal year 1980 began on July 1, 1979. A state pay period began on June 30, 1979 and ended on July 13, 1979. The answer to your questions depends upon whether "the first pay period in fiscal year 1980" began on June 30, 1979, before the beginning of fiscal year 1980, or on July 13, 1979, some twelve days after the beginning of the fiscal year.

Your opinion request informs me that the State Auditor and the Department of Administration have taken the position

that the phrase "the first pay period in" a fiscal year means the first pay period any part of which lies within the fiscal year. Thus, it is your position that the pay matrix for fiscal year 1980 should be put into effect on June 30, 1979, before the beginning of the fiscal year.

The language of the statute gives no guidance on this question. Subsection (iii) of section 2-18-303(1)(d), MCA, provides that an employee whose anniversary date "falls between (inclusive) July 1 and the first day of the first pay period in [the fiscal year]" receives his step increase effective the first day of the first pay period. This section could be read to require the first day of the first pay period in a fiscal year to fall after July 1. However, it can also be construed to permit the first day of the first pay period to fall prior to July 1.

The Department of Administration is charged with the responsibility for administering the pay program "on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able." § 2-18-301(3), MCA. I find nothing in the Department's interpretation which is inconsistent with these statutory goals. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration." Department of Revenue v. Puget Sound Power and Light Co., ___ Mont. ___, 587 P.2d 1282, 1286 (1978). This is particularly true where ex post facto imposition of a different rule would likely cause public injury or inconvenience. Murray Hospital v. Angrove, 92 Mont. 101, 117-118, 10 P.2d 577 (1932). Here, the ramifications of an alteration in payroll policy followed since 1977 are uncertain. The policy is not contrary to the enabling legislation, and I therefore conclude that it is permissible under the statute.

The responses to your inquiries flow directly from this conclusion. Following the above policy, the State Central Payroll Division could properly apply the pay matrix for fiscal year 1980 to the pay period beginning June 30, 1979. The same policy should apply to agencies on a monthly payroll. An employee who terminated service on that date would receive compensation for unused sick and vacation leave based on their salary on the date of termination, which is determined under the Department's policy by reference to the fiscal 1980 pay matrix. See §§ 2-18-617(2), 2-18-618(5), MCA. Finally, application of the policy to fiscal year 1981 would permit the use of the pay matrix for that fiscal year for the pay period beginning June 29, 1980.

THEREFORE, IT IS MY OPINION:

1. The State Central Payroll Division may apply the pay matrix for fiscal 1980 in issuing pay checks covering the pay period from June 30, 1979 to July 13, 1979, inclusive.
2. A state agency with a monthly payroll may apply the new pay matrix to the pay period beginning June 30, 1979.
3. Sick or annual leave for employees terminated as laid off on June 30, 1979 should be computed on the basis of the pay matrix in effect on that date.
4. The first pay period of fiscal year 1981 begins June 29, 1980.

Very truly yours,

MIKE GREELY
Attorney General