

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 114

CITIES AND TOWNS - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

EMPLOYEES, PUBLIC - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires

OPINIONS OF THE ATTORNEY GENERAL

accrual of vacation and sick leave benefits during the period of disability;

MUNICIPAL GOVERNMENT - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

POLICE - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

SALARIES - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

STATUTES - Duty of interpreting authority to declare clear terms of statute as written;

ADMINISTRATIVE RULES OF MONTANA - Sections 2.21.133(11), 2.21.221(9);

MONTANA CODE ANNOTATED - Sections 1-2-101, 2-18-611, 2-18-618, 7-32-4132;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 69 (1988).

HELD: Under section 7-32-4132, MCA, a police officer of a first- or second-class municipality who is injured in the performance of duty, is entitled to the difference between any workers' compensation benefits he receives and his regular salary. However, the statute does not provide for the accrual of either vacation or sick leave benefits during the period of disability.

6 October 1988

Jim Nugent
City Attorney
201 West Spruce Street
Missoula MT 59802

Dear Mr. Nugent:

You have requested my opinion on the following question:

OPINIONS OF THE ATTORNEY GENERAL

Whether section 7-32-4132, MCA, which requires that a first- or second-class city pay the difference between workers' compensation benefits and full salary to a police officer injured in the line of duty, also requires accrual of vacation and sick leave benefits during the period of disability.

I find no authority within the terms of the statute for requiring such benefits.

Section 7-32-4132, MCA, states:

A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the difference between his full salary and the amount he receives from workers' compensation until his disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever shall first occur.

The meaning of this statute is quite clear: The municipality must pay the difference between the amount a disabled officer receives in workers' compensation benefits and the normal salary of the officer. See 42 Op. Att'y Gen. No. 69 (1988). It neither expressly nor impliedly requires accrual of vacation or sick leave benefits.

Since section 7-32-4132, MCA, does not provide for accrual of benefits, the regular statutes governing vacation and sick leave benefits apply. Under state law, a person absent from employment during a period of disability would not be eligible for vacation or sick leave accrual. § 2-18-611, MCA (vacation leave) and § 2-18-618, MCA (sick leave). Both of these statutes, and the rules which implement them (§§ 2.21.133(11) and 2.21.221(9), ARM), contemplate that an employee must be in an actual pay status in order to accrue vacation and sick leave benefits.

I am aware of the argument that the Legislature, in providing for the increased disability payment to an officer injured in the performance of duty, must have meant to include accrual of vacation and sick leave benefits within its terms. When, as here, I find the terms of the statute to be clear and unambiguous, my duty is to declare them as written. See § 1-2-101, MCA;

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 115

SCHOOL BOARDS - Definition of "eligible transportee" under school transportation statutes;
SCHOOL BOARDS - Permission required for eligible transportee to be provided transportation out of district;
SCHOOL DISTRICTS - Definition of "eligible transportee" under school transportation statutes;
SCHOOL DISTRICTS - Permission required for eligible transportee to be provided transportation out of district;
MONTANA CODE ANNOTATED - Sections 20-5-301(3), 20-5-302, 20-10-101, 20-10-121(1), 20-10-122.

- HELD: 1. To be designated an "eligible transportee" for the purpose of the school transportation statutes, a pupil must reside more than three miles from the closest school, regardless of the school's location inside or outside the resident school district.
2. If an "eligible transportee" wishes to attend a school outside his district, he or she must obtain permission from the resident district school board in order to be provided transportation by the resident district.