

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 26

ARMED FORCES - Town not required to give paid military leave of absence;
CITIES AND TOWNS - Town not required to give paid military leave of absence;
LEAVES OF ABSENCE - Town not required to give paid military leave of absence;
LOCAL GOVERNMENT - Town not required to give paid military leave of absence;
MUNICIPAL GOVERNMENT - Town not required to give paid military leave of absence;
MONTANA CODE ANNOTATED - Sections 7-1-4111, 7-1-4121(9), 10-1-604;
MONTANA CONSTITUTION - Article XI, section 1;
UNITED STATES CODE - 38 U.S.C. §§ 2024(d), 2024(f).

HELD: An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

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17 September 1987

Donald D. Cole
Saco Town Attorney
171 South Central Avenue
Malta MT 59538

Dear Mr. Cole:

Your request for my opinion inquires whether a town employee who is a member of the National Guard is entitled to a leave of absence with pay while attending a training session with the National Guard. The subject of military leave is addressed by section 10-1-604, MCA, as follows:

A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time. [Emphasis added.]

Your letter concludes that this section has no application to a town employee. I agree with your conclusion.

The Montana Constitution defines the term "local government units" to include counties and incorporated cities and towns. Mont. Const. art. XI, § 1. Cities and towns are separately defined entities according to population, as set forth in section 7-1-4111, MCA. The term "municipality" means "an entity which incorporates as a city or town." § 7-1-4121(9), MCA. The plain meaning of the word "city" is not synonymous with the word "town." I cannot insert what the Legislature has omitted. If the Legislature had intended to include towns in section 10-1-604, MCA, it could have expressly done so either by enumeration or by utilization of the term "local government units" or "municipalities." As a rule in statutory construction, expressio unius est exclusio alterius, i.e., the expression of one excludes the other. I conclude that section 10-1-604, MCA, does

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not apply to a town, and that a town is therefore not required to grant paid leaves of absence for military training.

According to federal law, a public or private employer must grant a leave of absence for the period required to perform active duty for training or inactive duty training in the armed forces of the United States, including the National Guard. 38 U.S.C. §§ 2024(d), (f). The federal law further provides: "Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes." 38 U.S.C. § 2024(d). While the section is ambiguous with respect to whether the leave of absence must be given on a paid or unpaid basis, it has been determined that the Veteran's Reemployment Rights Act does not require an employer to pay a reservist for the time he is away on reserve training duty but only requires that a reasonable request for an unpaid leave of absence upon proper notice be granted. Hilliard v. New Jersey Army National Guard, 527 F. Supp. 405 (D.N.J. 1981).

THEREFORE, IT IS MY OPINION:

An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

Very truly yours,

MIKE GREELY
Attorney General