

VOLUME NO. 43

OPINION NO. 14

COUNTIES - Holiday pay entitlement of employees working 10-hour days;
COUNTY OFFICERS AND EMPLOYEES - Holiday pay entitlement of employees working 10-hour days;
EMPLOYEES, PUBLIC - Holiday pay entitlement of employees working 10-hour days;
HOLIDAYS - Pay entitlement of county employees working 10-hour days;
HOURS OF WORK - Holiday pay entitlement of county employees working 10 hour days;
SALARIES - Holiday pay entitlement of county employees working 10-hour days;
ADMINISTRATIVE RULES OF MONTANA - Sections 2.21.121 to 2.21.646, 2.21.134, 2.21.223, 2.21.619, 2.21.641;
MONTANA CODE ANNOTATED - Sections 2-18-603 to 2-18-620, 2-18-603, 2-18-604, 2-18-612, 2-18-618, 39-4-101 to 39-4-112, 39-4-107, 39-71-736;
MONTANA CONSTITUTION - Article XII, section 2(2);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 69 (1988), 37 Op. Att'y Gen. No. 16 (1977).

HELD: County road and bridge department employees regularly working four 10-hour days per week are entitled to eight hours' pay under section 2-18-603, MCA, for all nonworked holidays.

May 23, 1989

C. Ed Laws
Stillwater County Attorney
Stillwater County Courthouse
Columbus MT 59019

Dear Mr. Laws:

You have requested my opinion concerning the following question:

Are full-time county road and bridge department employees with a normal weekly work schedule consisting of four 10-hour days entitled to eight or ten hours of pay for those holidays on which they do not work?

I conclude that such employees are entitled only to eight hours of pay for nonworked holidays since, by constitutional and statutory provision, a regular day of work for full-time local government employees is generally defined as eight hours.

Article XII, section 2(2) of the Montana Constitution states that "[a] maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising" but authorizes "[t]he legislature [to] change this maximum period to promote the general welfare." The Legislature, in turn, has adopted workday length statutes dealing with various types of employment in sections 39-4-101 to 112, MCA. Of particular relevance is section 39-4-107(1), MCA, which provides in part that "[a] period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district." Section 39-4-107(3), MCA, however, permits 40-hour workweeks to be scheduled through four 10-hour workdays for county road and bridge department employees:

In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

This authorization to establish four-day workweeks consisting of 10-hour days has been used in Stillwater County for its road and bridge department employees. Virtually all other Stillwater County employees work five 8-hour shifts per week.

The sole statutory provision addressing holiday compensation for state and local government employees is section 2-18-603, MCA. Subsection (1) of that provision reads:

Any full-time 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 with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and his supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

See generally 37 Op. Att'y Gen. No. 16 at 62 (1977) (discussing effect of holiday pay requirement on computation of overtime compensation). Section 2-18-604, MCA, places responsibility for administering "employee annual, sick, or military leave provisions and the jury duty provisions" in sections 2-18-603 to 620, MCA, upon the Department of Administration or local government administrative officers and directs them to "promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof." Although the Department of Administration has issued such regulations for state employees (§§ 2.21.121 to 2.21.646, ARM), Stillwater County has not.

Section 2-18-603, MCA, does not specify the number of paid hours to which a full-time employee is entitled for holiday purposes. Indeed, other provisions dealing with annual and sick leave are similarly silent, indicating accrual amounts only in terms of "working days" credits. §§ 2-18-612(1), 2-18-618(1), MCA. These various leave provisions must nonetheless be read in light of the regular workday length of eight hours contained in Article XII, section 2(2) and section 37-4-107(1), MCA, and the accompanying presumption that the Legislature intended eight hours to constitute the basis upon which leave benefits would be calculated for full-time employees unless another amount was expressly stated. See 42 Op. Att'y Gen. No. 69 (1988) (construing the phrase "6 days' loss of wages" in section 39-71-736(1)(a), MCA, to mean 48 hours of wage loss irrespective of the affected employee's normal shift length).

I further note that, while section 39-4-107(3), MCA, allows counties and their road and bridge department employees or collective bargaining representatives to agree upon a 40-hour workweek consisting of four consecutive 10-hour workdays, nothing in either section 2-18-603, MCA, or related annual and sick

leave provisions suggests that, as to full-time employees, the particular method of workday scheduling should alter their leave entitlements or create arbitrary entitlement distinctions between individuals employed for the same number of regular hours per week.

This construction of section 2-18-603, MCA, is reflected in the Department of Administration's regulations governing state employee holiday pay entitlement. The regulations define "[h]oliday benefits" as "pay at the regular rate up to eight hours or equivalent paid time off up to eight hours paid to an eligible employee when the state observes a legal state holiday" (§ 2.21.619(4), ARM) and extends the 8-hour limitation to employees working four 10-hour days per week (§ 2.21.641(1), ARM). These regulations also provide that, "[i]f the employee [working 10-hour days] would receive less pay than usual, at the agency's discretion, the employee could work additional hours in the same pay period to make up the difference or could take annual leave or accrued compensatory time." § 2.21.641(1)(b), ARM. The same scheduling flexibility, of course, is available to local governments. The Department's interpretation of state employee holiday pay entitlement warrants substantial deference absent conflicting statutory provisions (Weis v. Division of Workers' Compensation, 45 St. Rptr. 1004, 1007, 755 P.2d 1385, 1387 (1988)), and I discern no basis upon which to conclude the Legislature intended local government employees to have any greater entitlement. It is noteworthy that not only the Department (§§ 2.21.134, 2.21.223(1), ARM) but also Stillwater County in administering the statutory vacation and sick leave provisions predicate "working days" credits on 8-hour periods--a settled, practical interpretation of analogous statutes supporting my determination with respect to the appropriate amount of holiday pay entitlement under section 2-18-603, MCA.

Finally, the road and bridge employees involved here are not represented for collective bargaining purposes. Nothing in this opinion, therefore, should be construed as addressing the issue of whether a county employer is authorized to enter into a collective bargaining agreement which provides for a holiday pay amount in excess of eight hours.

THEREFORE, IT IS MY OPINION:

County road and bridge department employees regularly working four 10-hour days per week are entitled to eight hours' pay under section 2-18-603, MCA, for all nonworked holidays.

Sincerely,

MARC RACICOT
Attorney General