

VOLUME NO. 44

OPINION NO. 27

AIRPORTS - Regional airport authority: crediting sick and vacation leave from prior public employment;
 CITIES AND TOWNS - Regional airport authority: crediting sick and vacation leave from prior public employment;
 COUNTY GOVERNMENT - Regional airport authority: crediting sick and vacation leave from prior public employment;
 EMPLOYEES, PUBLIC - Sick and vacation leave statutes: applicability to regional airport authority's police force;
 MUNICIPAL GOVERNMENT - Regional airport authority: crediting sick and vacation leave from prior public employment;
 MONTANA CODE ANNOTATED - Title 2, chapter 18, part 6; sections 2-18-101, 2-18-601, 2-18-618, 2-18-620, 7-13-215, 67-1-101, 67-11-103 to 67-11-105, 67-11-201;
 OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 68 (1990), 37 Op. Att'y Gen. No. 102 (1977).

HELD: A regional airport authority must give credit for sick or vacation leave to its airport police officers based upon their prior employment with other public entities.

March 5, 1992

Patrick L. Paul
 Cascade County Attorney
 Cascade County Courthouse
 Great Falls MT 59401

Dear Mr. Paul:

You have requested my opinion concerning the following question:

Is the regional airport authority required to give any appropriate credit for sick or vacation leave to its airport police officers based upon their prior employment with other public entities such as a city police department or a sheriff's department?

I conclude that a regional airport authority is a public entity and, therefore, upon satisfaction of relevant statutory criteria, it is required to give credit for sick and vacation leave earned by its airport police officers during prior employment with other public entities.

The Great Falls International Airport Authority (hereinafter "the Airport") is a regional airport authority created by Cascade County and the City of Great Falls. See §§ 67-11-103, 67-1-101(27), MCA. On occasion, the Airport has hired former law enforcement officers from Cascade County and the City of

Great Falls to work as airport police. You have asked me whether the Airport is required to give sick and vacation leave credit to these officers based upon their prior employment with Cascade County or the City of Great Falls.

The applicable Montana Code sections addressing government employees' sick and vacation leave appear in Title 2, chapter 18, part 6, entitled "Leave Time." Part 6 of chapter 18 contains a set of definitions that apply specifically to leave time: "For the purpose of this part [part 6], except 2-18-620, the following definitions apply" § 2-18-601, MCA. At the outset, therefore, it should be noted that for the purpose of examining the coverage of leave time benefits, the definitions within section 2-18-601, MCA, control. The definitions set forth in part 1 of chapter 18, which generally cover state employees and state agencies, are expressly not applicable to the leave time provisions within part 6 of chapter 18: "As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply" § 2-8-101, MCA.

In part 6 of chapter 18, the code defines an employee as "any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts." § 2-18-601(2), MCA. An agency is defined for the purposes of part 6 as "any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof." § 2-18-601(1), MCA. Thus the application of sick and vacation leave statutes is not limited to state government employees. The statutes also apply to employees who work for county or city government or any political subdivision thereof. The question that must be answered, then, is whether the Airport is a political subdivision of Cascade County and the City of Great Falls.

An examination of the law reveals that the Airport is a political subdivision of Cascade County and the City of Great Falls. Section 67-11-103(1), MCA, declares that a regional airport authority is a public body created by a joint resolution of two or more municipalities. A county government is considered a municipality for purposes of section 67-11-103(1), MCA. See § 67-1-101(27), MCA. By statute, the municipalities must create a regional airport authority board of not less than five commissioners. § 67-11-103(1), MCA. The municipalities specify in the resolution the number of commissioners "to be appointed, their term[s] and compensation, if any." By its own terms a regional airport authority is the creation of two municipalities. In addition, it is provided "the same powers as all other political subdivisions" in the performance of governmental functions related to comprehensive airport zoning regulations. § 67-11-103(5), MCA.

The Airport is not a private corporation, but a public corporation formed by a resolution to serve the public. See §§ 67-11-103(1), 67-11-105, MCA. The Airport management is granted a great deal of autonomy from the municipalities. However, the Airport's underlying function is to serve as a

public agency. This underlying goal of serving the public is evident in section 67-11-105, MCA, which defines the functions of an airport authority:

Functions -- public and governmental. The acquisition of any land or interest therein, pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised *are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.* [Emphasis added.]

Consistent with the legislative recognition that airport authorities are created by municipalities to serve the public, I conclude that the Airport is a public agency and a political subdivision of the municipalities that created it. Cf. 37 Op. Att'y Gen. No. 102 at 427 (1977) ("By virtue of the relationship between the county [that forms the district] and the district, it is clear that a hospital district is a subdivision of the county, created to provide the public with hospital service").

In 43 Op. Att'y Gen. No. 68 (1990), I concluded that a refuse management district was not a political subdivision for purposes of receiving a loan from the Board of Investments under the Municipal Finance Consolidation Act. In that opinion, I determined that a refuse disposal district was not a political subdivision because the district was not an independent governing body, capable of exercising authority separate from the county commissioners that created the district. 43 Op. Att'y Gen. No. 68 at 259. Here, as far as sick and vacation benefits are concerned under Title 2, chapter 18, part 6, MCA, the critical consideration is not whether an airport authority is an independent governing body, but the fact that the airport authority is a public corporation whose underlying function is to serve as a public agency. Unlike a refuse disposal district, the airport authority has a governing body, independent of the county commissioners. See §§ 67-11-104, 67-11-105, 67-11-201, MCA. Such autonomy may be contrasted to the dependence of the refuse disposal districts, under the law in effect at the time the prior opinion was issued, upon the approval of the county commissioners before significant actions could be taken. See § 7-13-215, MCA (1989). The public and independent nature of the airport authority's duties makes the airport authority a political subdivision for purposes of the sick and vacation leave statutes.

Since the Airport is a political subdivision of the City of Great Falls and Cascade County, employees of the Airport are entitled to those sick and vacation leave benefits provided in Title 2, chapter 18, part 6, MCA. The transfer of particular benefits and computation of credits earned during prior employment will depend on the particular circumstances of the Airport employee and the satisfaction of applicable statutory criteria and definitions. It is significant to note that transfers of accumulated annual vacation and sick leave credits are limited to "transfers between agencies within the same jurisdiction." See §§ 2-18-617(3), 2-18-618(5), MCA. Consistent with the reasoning of this opinion, an employee transferring from the Great Falls Police Department or Cascade County Sheriff's Office to the Airport is transferring between agencies within the same jurisdiction and fulfills this aspect of the statutory requirements. The satisfaction of other relevant criteria, such as the requirement that a "transfer" be completed without a "break in service," must be determined following the application of appropriate statutory definitions to the particular employee's circumstances. See § 2-18-601(12), (14), MCA.

THEREFORE, IT IS MY OPINION:

A regional airport authority must give credit for sick or vacation leave to its airport police officers based upon their prior employment with other public entities.

Sincerely,

MARC RACICOT
Attorney General