

Opinion No. 60-196

October 17, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. James L. Dow City Attorney Carlsbad, New Mexico

QUESTION

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1. Must the City of Carlsbad pay National Guard employees who have been employed by the City of Carlsbad less than a year and which employment is not sufficient to entitle them to leave with pay from the City of Carlsbad, pursuant to Section 9-9-10, N.M.S.A., 1953 Compilation?.
2. Are employees of the City who are members of the National Guard, entitled to leave with pay from the City while serving on active duty with the National Guard in addition to their annual vacations with pay when such periods of leave do not coincide?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

{*601} ANALYSIS

1. The statute (Section 9-9-10, N.M.S.A., 1953 Compilation) provides that military personnel shall be given not to exceed fifteen days military leave with pay annually when ordered to active duty. This statute has been held inapplicable to temporary employees (Attorney {*602} General's Opinion No. 58-173, Report of the Attorney General 1957-58, page 769) as temporary employees were not deemed within the contemplation of the Legislature when the act was passed.

However, no restriction is placed upon the time of service rendered by permanent employees before this leave accrues. The Legislature could easily have done so but in the absence of such an affirmative provision or exception, it is our holding that regardless of the duration of employment, permanent employees are entitled to such military leave with pay. This, we believe to be consonant with the intention of the Legislature which was to make it possible for personnel affiliated with the military to take training for the benefit of the national defense without being penalized therefor.

2. The statute provides that "such leave (is) to be in addition to other leave or vacation with pay to which such employees are otherwise entitled". From this it seems clear that a permanent employee is entitled to pay for his active military duty in addition to that for his vacation.

By: Mark C. Reno

Assistant Attorney General