

Opinion No. 64-155

December 28, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Alex J. Armijo, State Auditor, Santa Fe, New Mexico

QUESTION

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May local public bodies make payments to employees in lieu of their taking accumulated vacation time?

CONCLUSION

Unless prohibited by statute or ordinance, when the payment for vacation time is made upon termination of employment it is permissible. See Analysis.

OPINION

ANALYSIS

In answering your question it is first necessary to distinguish between two different types of fact situation. First is the situation where the employee continues to be employed by the local public body but simply does not take his vacation time and is paid therefor. In such instances the payment is improper.

Vacations provided for under personnel ordinances or merit systems are usually not mandatory; they are optional with the employee. However, vacations with pay are not for the sole benefit of the employee. Vacations do more than promote good relations between employer and employee. A period of rest and relaxation is considered conducive to increased efficiency from which both parties benefit. **Housing Authority v. Harper**, Tex. Civ. App., 241 S.W.2d 347.

Thus the rule has developed that even though employees by ordinance or custom are allowed a vacation period, they may not be paid their regular salary plus a salary for vacation time they did not take. As the court said in **Rawlings v. City of Newport, Ky.**, 121 S.W.2d 10:

". . . there was no justification for an attempt to pay an employee for a vacation period not taken. This constituted double payment for a particular period of time."

The second fact situation is where employees receive payment for accumulated vacation time when they separate from the service of the public employer. We would first mention here that the general rule is that time allowed for vacations may not be accumulated from calendar year to calendar year unless a statute or ordinance expressly so provides. **Housing Authority of San Antonio v. Newton**, Tex. Civ. App., 235 S.W.2d 197; **Vaughn v. Chicago**, 198 Ill. App. 100.

The more modern rule is that employees of political subdivisions may, upon termination of their employment, be compensated for their permissible accrued vacation time unless **prohibited** therefrom by the personnel ordinance or merit system. This rule is based upon the viewpoint that payment for vacation time is a part of the employee's compensation and to pay for this time upon termination of employment is neither a gratuity nor double payment. **Tevis v. County of San Francisco**, Cal., 272 P.2d 757; **Housing Authority v. Harper**, Tex. Civ. App., 241 S.W.2d 347.

In the case of State employees the rules of the Personnel Board provide that

"Any employee separated for cause may be paid any unused portion of his annual leave at the discretion of the appointing authority."

Thus in the case of separations for cause such payment is discretionary. The same rule provides that

"Any employee who is separated without fault or delinquency on his part shall be paid for any unusual portion of his annual leave and this amount shall not exceed one month's pay."

In our opinion, local public bodies can use this same general procedure unless the personnel ordinance or contract of employment prohibits such payment. And, of course, payment is to be made only for the permissible amount of accrued vacation time.