

## **Opinion No. 65-123**

July 8, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. William M. Polk, Business Manager, Girls' Welfare Home, Box 6038 /- Station B, Albuquerque, New Mexico

### **QUESTION**

#### QUESTIONS

1. May a state employee, upon termination, receive payment for more than thirty days accrued leave time?
2. May a state employee, upon termination, receive payment for "compensatory time"?
3. Simply because a state employee's salary is a fixed annual budgeted amount, does this mean that such state employee has a contract for one year of employment?

#### CONCLUSIONS

1. No.
2. No.
3. No.

### **OPINION**

#### {\*210} ANALYSIS

State employees are in one of two categories, to-wit: classified and unclassified. The rules and regulations of the State Personnel Board govern those state employees who are in the classified service. Section 901.3 of those rules provides that:

"no more than thirty (30) working days of annual leave shall be accrued."

Section 902 provides that "A permanent, probationary, or provisional incumbent who resigns, or has been terminated, shall be paid for accrued annual leave."

Section 902.1 provides as follows:

"The amount paid for accrued annual leave to an employee who has been separated shall in no case exceed payment for thirty (30) working days or two hundred forty (240) hours.

As to unclassified employees, there is no statutory provision whatever for accrued annual leave. In fact, there is not even a provision for vacations. Public employees have no vested right in vacations. **People, ex rel. Hollie v. Chicago Park Dist.**, Ill., 16 N.E. 2d 161. And some courts have allowed no payment for accrued annual leave upon separation from public service. **State ex rel. Bonsall v. Case**, Wash., 19 P. 2d 927; **Nicholson v. Amar**, Cal., 45 P.2d 697. However, a custom has developed in this State whereby

State agencies and institutions follow the rules of the Personnel Board in regard to annual and sick leave of unclassified employees. Thus it is legal to pay an unclassified employee for up to thirty days accrued annual leave upon separation. But there is absolutely no authority to pay such employee for more than thirty days accrued annual leave upon separation.

Your second question deals with compensatory leave. Section 908 of the Personnel Board rules provides as follows:

"When directed by proper authority an incumbent with permanent status or serving under a probationary, provisional or temporary appointment may accumulate credit working overtime and may be granted equal compensatory leave at times convenient to the operation of the agency."

Section 908.1 provides that:

"Maximum accrual of compensatory leave shall be ten (10) working days and such leave shall be taken within ninety (90) calendar days after accrual or it shall lapse, unless the appointing authority extends this time for the convenience of the agency."

Nowhere is there even a hint that an employee may be paid for compensatory leave. Many state agencies and institutions do not even provide for compensatory leave, much less pay for such time upon an employee's termination. Extra compensation for extra service must be expressly authorized. **State v. Nolte**, Mo., 180 S.W. 2d 740; **Chinn v. City of Biloxi**, Miss., 183 So. 375. Since there is no statutory authority for payment of accrued compensatory leave upon separation, the agency or institution cannot make payment therefor.

The fact that a person's annual salary is a fixed budgeted amount, say \$ 8,000, certainly does not mean that the employee has an employment contract for one year. Such an interpretation would thoroughly handcuff the governing authority. Absent a specific statute so providing, there is no justification whatever for a contention that an employee has a year's contract by virtue of the fact that his salary is X number of budgeted dollars per year.