



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

April 30, 1952

Mrs. Bess Blackwell
Executive Secretary
State Board of Hairdress-
ers and Cosmetologists
Austin, Texas

Opinion No. V-1452.

Re: Authority of the
head of a depart-
ment to either in-
crease or decrease
the maximum number
of hours earned by
an employee for
vacation in any one
fiscal year of the
current biennium.

Dear Mrs. Blackwell:

Your request for an opinion reads as follows:

"We have some of the employees with this department working forty-four hours from Monday through Friday, while others work from forty-four to forty-eight hours per week, Monday through Saturday.

"Would it be proper for the Board to set the same vacation time for all employees, and if so, which would be the proper procedure to follow, the forty-four hour work week or the forty-eight hour work week, exclusive of holidays?"

Your question concerns only those employees of your Board who earn during any one fiscal year of the current biennium the maximum number of hours allowed by law for vacation without deduction of salary.

The appropriations for the support and maintenance of your Board, including the salaries of its members and employees for each fiscal year of the current biennium, are contained in Section 1 of House Bill 426, Article III, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228, at page 1342. The remaining sections thereof are riders pertaining to the expenditure of the appropriations made in Section 1. Section 2, subsection (7), at page 1434, provides:

"State employees shall work a minimum of forty-four (44) hours per week."

Subsection (9) reads as follows:

"Vacation allowance. Department employees, shall without deduction of salary, receive not exceeding one (1) working day's vacation for each month of service not to exceed eighty-eight (88) hours, for those employees who work forty-four (44) hours, nor ninety-six (96) hours, for those employees who work forty-eight (48) hours per week, in any one fiscal year. Said vacation period to be mutually agreed upon by the Head of the Department with his employees; and any unused vacation in any one (1) fiscal year may be used only during the following fiscal year. Provided, however, that no employee shall be allowed any paid vacation until he has had continuous employment with the State of Texas for six (6) months." (Emphasis added.)

We think the underlined provisions of subsection (9) are plain, and clearly fix the maximum number of hours a departmental employee may earn for vacation in any one fiscal year. If an employee works forty-four hours per week, he may earn in any one fiscal year a maximum of eighty-eight hours, or if he works forty-eight hours per week, he may earn a maximum of ninety-six hours for vacation. In each instance, the maximum vacation allowance is equivalent to two weeks of regular working time.

The Legislature has provided that when an employee has earned in any one fiscal year the maximum number of hours for vacation that he "shall without deduction of salary receive" the number of hours so earned for his vacation. Consequently, your Board may neither increase nor decrease the number of hours earned by an employee for vacation in any one fiscal year of the current biennium.

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SUMMARY

The head of a department has no authority to either increase or decrease the maximum number of hours earned by an employee for vacation in any one fiscal year of the current biennium beginning September 1, 1951, and ending August 31, 1953. H.B. 426, Art. III, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228.

APPROVED:

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Yours very truly,

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