



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

November 4, 1971

Honorable Bob Armstrong
Commissioner
General Land Office
Austin, Texas 78701

Opinion No. M-984

Re: Related questions concern-
ing compensation and
accumulation of annual
leave for State employees.

Dear Mr. Armstrong:

You request our opinion on the proper amount of annual leave for State employees employed on an annual basis with fifteen years or more of service, and a determination of how many days of annual leave an employee may carry forward.

You specifically ask if an employee, upon completion of fifteen years of service, has at that time earned fifteen days of annual leave, or if at that time he only begins to accumulate fifteen days, prorated throughout the following year so that the fifteen days of annual leave are not actually earned until the completion of his sixteenth year of employment.

The language contained in the General Appropriation Bill of the Sixty-first Legislature and the Sixty-second Legislature is identical and this opinion will only refer to the present appropriation bill.

The current General Appropriation Bill,¹ in its Article V, Sec. 7(a), page V-35, reads, in part;

"EMPLOYEES VACATION AND LEAVES. a. Annual employees of the State shall, without deduction in salary, be entitled to a vacation of two normal work weeks in any one fiscal year, such entitlement to be accrued proportionately for each month of service during the year.

¹S.B. 11, Acts 62nd Leg., R.S., 1971, as amended by S.B. 7, 1st C.S., 62nd Leg., 1971.

"Annual employees with fifteen (15) or more years of employment with the State shall be entitled to two normal work weeks plus five (5) additional normal working days of vacation in any one fiscal year.

"Annual employees with twenty (20) or more years of employment with the State shall be entitled to two normal work weeks plus ten (10) additional working days of vacation in any one fiscal year."

Our interpretation of this provision is that State employees accrue vacation entitlement monthly according to length of service as follows:

<u>LENGTH OF STATE SERVICE</u>	<u>MONTHLY VACATION ACCRUED</u>
Less than 15 years	6-2/3 hours
From 15 through 19 years	10 hours
20 years and over	13-1/3 hours

The language is definite that an annual employee who completes fifteen years or more of employment shall be entitled to two normal weeks plus five additional normal working days of vacation in any one fiscal year. If there be any doubt or ambiguity in the statute calling for construction, it should be resolved in favor of the beneficiary under the well settled canon which demands a liberal construction in favor of encouraging State service by State employees. Attorney General Opinion No. C-679 (1966); 50 Am.Jur. 420, Statutes, Sec. 396. Our opinion is that an annual employee who has completed fifteen years of service is entitled to fifteen normal working days of vacation.

Thus, the employee who is beginning his fifteenth year of employment with the State must complete his fifteenth year in order to become entitled to fifteen days of vacation.

An analogous situation is the provision in the Appropriation Bill that provides that no beginning employee shall be allowed any paid vacation entitlement until he has had continuous employment with the State for six months. Under the terms

of this provision, the beginning employee who has worked only four months has not earned any vacation entitlement. However, if the employee completes six months of employment, then he becomes entitled to five days of vacation.

However, in the event an employee dies or terminates his employment during his fifteenth year, then for the purpose of computing his accrued vacation, the vacation entitlement would be based on vacation accrued at the rate of 6-2/3 hours for each month of employment and not 10 hours, since the prerequisite of working the full fifteen years has not been met. We followed this reasoning in our Opinion No. M-731 (1970).

Our holdings relative to an employee during his fifteenth year of service and at completion of fifteen years of service are likewise applicable to an employee during his twentieth year of service and at the completion of twenty years.

You further ask how many total days of annual leave an employee may carry forward without taking the vacation or losing the time. The applicable portion of the current General Appropriation Bill pertinent to this question is that portion of Sec. 7(a) which reads as follows:

". . .

"Total accumulated leave to any employee may never exceed the equivalent of his earned vacation entitlement for the preceding two-year period. No employee shall be allowed any paid vacation entitlement until he has had continuous employment with the State for six (6) months.

". . ."

The act is quite clear that an employee may not accumulate vacation entitlement exceeding the preceding two years. Our opinion is that an employee may carry forward from one fiscal year to the next no more than an accumulation of two years vacation, and that at the conclusion of the third fiscal year he must have used at least one year or lose that portion of total accumulated vacation that exceeds the accumulated vacation for the preceding two-year period.

Stated another way, an employee during any one fiscal year may use vacation entitlement accumulated during the preceding two-year period, plus the accrued vacation for the current year.

This Office is mindful of Subdivision g of Section 7 of the current General Appropriation Bill, which provides as follows:

"g. The State Auditor shall provide a uniform interpretation of the provisions herein contained on employee vacations and leaves, and shall report to the Governor and the Legislature any exceptions practiced by the various entities of the State Government."

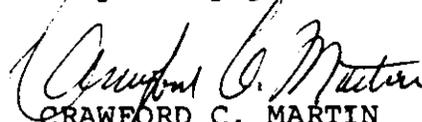
This Office has construed this provision to mean that the State Auditor may provide a uniform interpretation of the provisions on employee vacations and leaves, but such interpretation would be advisory in nature only and not a final determination because the Legislature has specifically delegated to the Attorney General the responsibility of interpreting legislative intent as it relates to the General Appropriation Bill.

SUMMARY

An annual employee upon completion of his fifteenth year of service is entitled to fifteen normal working days of vacation.

An employee during any one fiscal year may use vacation entitlement accumulated during the preceding two-year period, plus the accrued vacation for the current year.

Very truly yours,


CRAWFORD C. MARTIN
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Prepared by Linward Shivers
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Honorable Bob Armstrong, page 5 (M-984)

APPROVED:
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