



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

July 3, 1974

The Honorable Dr. J. W. Edgar
Commissioner of Education
Texas Education Agency
201 E. Eleventh Street
Austin, Texas 78701

Opinion No. H- 341

Re: Computation of
vacation time under
the General Approp-
riations Act (H. B. 139,
63rd Leg.)

Dear Dr. Edgar:

You have submitted three questions to us concerning the vacation and sick leave provisions of the General Appropriations Act for fiscal 1974 and 1975 (Acts 1973, 63rd Leg., ch. 659, p. 1786). See Article 6813b, V. T. C. S. Your first question deals with that portion of Sec. 7a of Article V, General Provisions, which provides:

Sec. 7. EMPLOYEES VACATIONS AND LEAVES.

a. Employees of the State shall, without deduction in salary, be entitled to a vacation in each fiscal year. Such entitlement shall be earned in accordance with the following schedule.

<u>Employees With Total State Employment Of:</u>	<u>Hours Accrued Per Month</u>
Less than 15 years	7
15 years but less than 20 years	10
20 years and over	14

You ask: What is the definition of the fifteenth and twentieth years of service?

In our opinion the provision is unambiguous. An employee during his first fifteen years of employment earns vacation time at the rate of seven hours of vacation time for each month of employment. Not until he has completed the fifteenth year of employment does he step up to the next higher rate of ten hours per month of employment. Similarly, when he

has completed twenty years, he moves up to the rate of fourteen hours per month. In both instances, the employee must complete the year of employment, whether the fifteenth or the twentieth, before he commences to earn vacation time at the higher rate. See Attorney General Opinion M-984 (1971).

Section 7a of the General Provisions further provides:

An employee will earn vacation entitlement beginning on the first day of employment with the State and terminating on the last day of duty. Vacation entitlement is accrued at the applicable rate cited above. Credit for one month's accrual will be given for each month or fraction of a month of employment with the State. . . .

You ask: "What is the usable definition of a fraction of a month's employment and how is annual leave to be credited for this period of time?"

The question arises only when an employee enters into state employment on a day other than the first day of the month. However, whether that day is the 5th, the 20th or some other day, it is on that day that the employee begins to earn vacation entitlement under the clear terms of the Act. In our opinion, each month of service would commence on the same day of each succeeding month, and, by the same token, would end on the preceding day of each month.

Therefore, if employment extends past the day of the month on which it first commenced and then terminates, the employee has a fraction of a month's employment for which he would be entitled to the unit of vacation accrued during one month's employment.

Your third question involves Sec. 7b of Article V of the Appropriations Act which provides, with reference to accrual of sick leave:

b. Employees of the State shall, without deduction in salary, be entitled to sick leave subject to the following conditions:

Sick leave entitlement shall be earned at the rate of eight (8) hours for each month or fraction of a month employment [sic]; and shall accumulate with the unused amount of such leave carried forward each month.

In view of the fact that the Appropriations Act for fiscal 1973 (Acts 1972, 62nd Leg., 3rd C.S., ch. 1, p. 15, 273) provided for a limited carry forward for a maximum period of 3 years, you ask whether unlimited accrual became effective on September 1, 1973, or will become effective September 1, 1974.

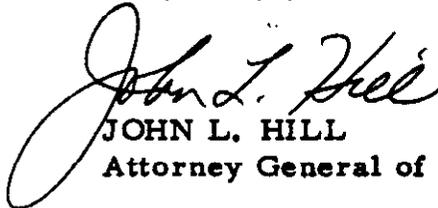
The only validity of riders in a general appropriations act must be as limitations on the expenditure of funds appropriated by the Act. Texas Constitution, Art. 3, Sec. 35; Attorney General Opinion V-1254 (1951). Therefore, with the end of fiscal year 1973 on September 1, 1973, the general provisions of the general appropriations act for that year lost their vitality and were superceded by the provisions of the Act for fiscal 1974 and 1975. Therefore, it is our conclusion that, as of September 1, 1973, sick leave can be accumulated without limitation.

S U M M A R Y

Under the current Appropriations Act, an employee must complete a full fifteen or twenty years of employment to be entitled to one of the higher rates of accruing vacation time. For these purposes, employment is to be calculated from the actual starting date.

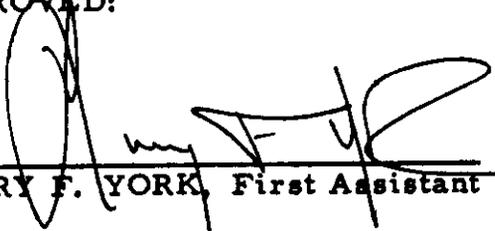
On and after September 1, 1973, sick leave may be accumulated without the limitation imposed in fiscal year 1973 and earlier.

Very truly yours,

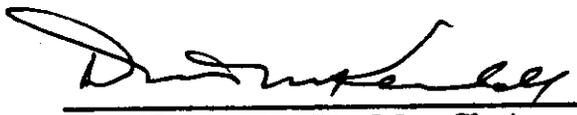

JOHN L. HILL
Attorney General of Texas

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APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee