



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

September 16, 1977

Honorable Charles LeMaistre
Chancellor, University of
Texas System
Office of General Counsel
201 West 7th Street
Austin, Texas 78701

Opinion No. H- 1055

Re: Whether faculty members
of the University of Texas
are entitled to payment for
sick leave on termination.

Dear Dr. LeMaistre:

You have requested our opinion regarding whether faculty members of the University of Texas are entitled to payment for sick leave upon termination of employment. The General Appropriations Act for the 1975-77 biennium provides, in article V, section 7(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, and shall accumulate with the unused amount of such leave carried forward each month.

Sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when a member of his immediate family is actually ill. An employee who must be absent from duty because of illness shall notify his supervisor or cause him to be notified of that fact at the earliest practicable time.

To be eligible for accumulated sick leave with pay during a continuous period of more than three (3) working days, an employee absent due to illness shall send to the administrative head of his employing agency a doctor's certificate

showing the cause or nature of the illness or some other written statement of facts concerning the illness which is acceptable to such administrative head.

Upon return to duty after sick leave the employee concerned shall, without delay, complete the prescribed application for sick leave and submit the same through proper channels to the appropriate approving authority for his consideration.

Exceptions to the amount of sick leave an employee may take may be authorized by the administrative head or heads of any agency of the State provided such exceptions are authorized on an individual basis after a review of the merits of such particular case. A statement of any such authorized exceptions or the reasons for them shall be attached to the State agency's duplicate payroll voucher for the payroll period affected by such authorized exceptions.

The foregoing provision regarding sick leave shall not apply to State institutions of higher education which had established rules in effect prior to the adoption of this Act for sick leave for the nonacademic and academic staffs of such institutions, and such sick leave policies may continue to be established by the governing boards of such institutions.

A state employee who resigns, is dismissed or separated from state employment shall be entitled to be paid for one-half of sick leave entitlement duly accrued.

(Emphasis added). We note that the latter provision does not appear in the General Appropriations Act for the 1977-79 biennium.

In Attorney General Opinion H-766 (1976) at 3, we held that the provision authorizing

payment of . . . an employee's accumulated sick leave upon termination of employment is applicable to state institutions of higher education.

We noted, however, that under the language of section 7(b), an institution of higher education which had established sick leave policies in effect prior to September 1, 1975,

may continue to enforce those policies and to promulgate additional policies of a similar nature.

Attorney General Opinion H-766 (1976) at 4. You state that a number of the component institutions of the University of Texas System have for many years maintained a sick leave policy regarding faculty members. During the period of a faculty member's illness, his teaching duties are assumed by another member of his department, but he continues to receive his regular salary. Records of sick leave accrued and used are not maintained, and sick leave accrual has not been recognized.

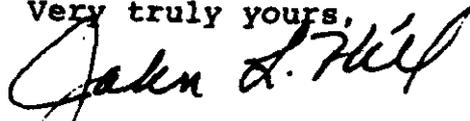
If an institution is able to demonstrate that such policies were in effect prior to September 1, 1975, and that sick leave accrual by faculty members was not recognized prior to that time, we do not believe that the institution is required to compensate a separated employee for sick leave on termination. Whether such policies were indeed in effect is of course a question of fact, which may be demonstrated by the existence of written rules, statements in a faculty handbook, or otherwise.

S U M M A R Y

If, under established policy prior to September 1, 1975, faculty members did not accrue sick leave, a university is not required to compensate a separated employee for sick leave on termination. Whether such policy was in effect is a question of fact.

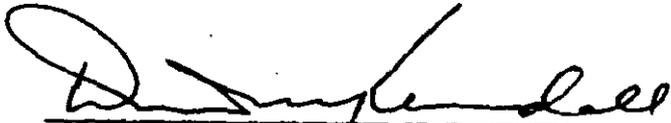
Honorable Charles LeMaistre - Page 4 (H-1055)

Very truly yours,

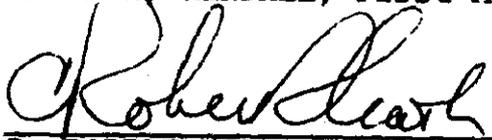


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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