



# The Attorney General of Texas

December 21, 1981

**MARK WHITE**  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

1607 Main St., Suite 1400  
Dallas, TX. 75201  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905  
915/533-3484

1220 Dallas Ave., Suite 202  
Houston, TX. 77002  
713/650-0666

806 Broadway, Suite 312  
Lubbock, TX. 79401  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

Honorable Wilhelmina Delco  
Chairman  
Committee on Higher Education  
House of Representatives  
Austin, Texas 78769

Opinion No. MW-414

Re: Construction of General  
Appropriations Act provision  
on compensatory time for  
employees required to work on  
holidays

Dear Representative Delco:

You have requested our opinion regarding the construction of a provision of the General Appropriations Act regarding compensatory time for certain employees. Acts 1981, 67th Leg., ch. 875, art. V, §6c, at 3798. Section 6c of article V of the current act provides in pertinent part:

Each state agency and institution and agencies of higher education will, during the biennium, have on hand enough personnel to carry on the activities of each institution or agency so that the public business can be carried on during that period. Those employees who are working during that holiday period will be allowed compensatory time off at a later time. The supervisor in charge may require the employee to give reasonable notice in advance of taking compensatory time off but may not require that the employee specify the reason for which the compensatory time is to be taken....

Agencies who have work schedules other than provided in Article 5165a, Section 2, will insure that employees working these schedules observe the equivalent number of holidays each year as employees working normal office hours.

You ask:

Was it the legislative intent to extend the privilege of input in deciding which days could be taken as compensation for holidays to both regular

hour employees and rotating or shift time employees?

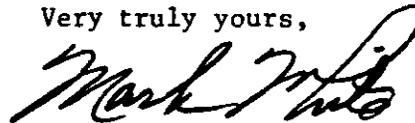
You state that agencies with employees on rotating shifts have in the past allowed those employees to decide when to take compensatory time. In our opinion, the language of the appropriations act does not authorize the employee to insist that compensatory time be used only on a particular date or at a particular hour. The agency is required by the rider to have on hand enough personnel to carry on public business. This requirement is one factor that may prevent the use of compensatory time on a particular date. We believe that both the employee and his supervisor should have in mind a range of alternatives, so that the employee is enabled to use his time when most convenient for him to do so, and, on the other hand, so that the work of the agency is not unduly disturbed by his absence. The employee's "privilege of input" does not give him the exclusive right to determine when compensatory time will be taken.

In our opinion, the General Appropriations Act makes no distinction between regular employees and those on rotating schedules or shifts. The only purpose of the second paragraph quoted here is to insure that rotating employees receive the same amount of holiday time as regular employees. The same flexibility as is contemplated for regular employees should also be practiced by rotating or shift employees and their supervisors.

S U M M A R Y

The General Appropriations Act contemplates a shared responsibility between employee and supervisor with regard to the use of compensatory time. The act makes no distinction for this purpose between regular employees and rotating or shift employees.

Very truly yours,



MARK WHITE  
Attorney General of Texas

JOHN W. FAINTER, JR.  
First Assistant Attorney General

RICHARD E. GRAY III  
Executive Assistant Attorney General

Prepared by Rick Gilpin  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Susan L. Garrison, Chairman  
Jon Bible  
Rick Gilpin  
Jim Moellinger