



**THE ATTORNEY GENERAL  
OF TEXAS**

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*Overruled by  
J.M.-19*

December 15, 1972

Hon. Bob Bullock  
State of Texas  
Office of the Secretary  
of State  
Austin, Texas 78711

Opinion No. M- 1279

Re: Questions relating to transfer of accrued vacation credit and payment in cash in lieu of vacation taken, of state employees and constitutional officers of the State.

Dear Mr. Bullock:

Your request for an opinion asks the following questions:

- "1. May a state employee who is appointed, without interruption of state employment, to a Constitutional Office of the State of Texas be credited with unused vacation entitlement accrued prior to his appointment?
- "2. May a Constitutional Officer of the State of Texas accrue and be paid for all accrued but unused vacation entitlement upon termination from that office?
- "3. If the above answer is in the affirmative, when should payment be made?
- "4. If there are insufficient funds in the appointed officer's line item salary appropriation, from which salary appropriation should payment be made?"

Accrued vacation entitlement is a vested right of State employees and of their estates. Attorney General's Opinions Nos. M-1075 (1972) and M-1252 (1972).

Article 6813b, Vernon's Civil Statutes, provides in part:

"From and after the effective date of this Act, all salaries of all State officers and State employees, including the salaries paid any individual out of the General Revenue Fund, shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act. . . ."

It was held in Attorney General's Opinion No. M-1252.

"Since payment for all duly accrued vacation time is payment for services rendered, it is our opinion that such payment constitutes salaries within the meaning of Article 6813b. . . . Employees for whom line item appropriations are made may be paid for accumulated vacation time from other salary funds."

Section 7 of Article V of the current General Appropriation Act is by its express terms applicable only to "annual employees of the State". Therefore, it is our opinion that the provisions of Section 7 of Article V relating to "Employees Vacation and Leaves" are not applicable to State officials.

Terminal leave pay for all vacation time duly accrued was required for the first time in the current General Appropriation Act. Prior to its enactment, pay for accrued vacation was not permitted except as provided in Article 6252-8a, Vernon's Civil Statutes. See, Attorney General's Opinion No. M-1075 (1972).

Section 7 of Article V of the current General Appropriation Act provides in part:

"If a State employee transfers directly from one State agency to another, he shall be entitled to credit with the newly employing agency for his accumulated but unused vacation entitlement, provided that his employment with the State is uninterrupted. A State employee who resigns, is dismissed, or separates from State employment shall be entitled to be paid for all vacation time duly accrued."

In view of the foregoing, your questions are answered as follows:

1. Whenever a State employee qualifies to a Constitutional Office of the State, he ceases to be a State employee. There is no authorization for payment for unused vacation time for an employee whose employment was terminated prior to September 1, 1972. If a State employee qualifies to a Constitutional Office after September 1, 1972, such individual would be entitled to be paid all vacation time duly accrued. An employee's unused vacation entitlement may not be transferred and credited to him in his capacity as a Constitutional or statutory Officer because the above quoted provision regarding transfers of vacation time speaks only to employees as distinguished from officers. The same language regarding transfers of vacation time has been included in the last five appropriation bills.

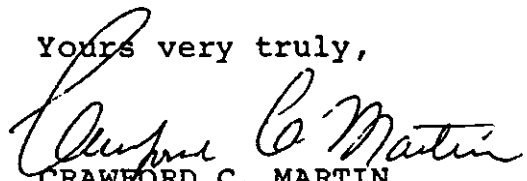
2. A Constitutional Officer of the State may not accrue or be paid for vacation.

In view of our answer to question 2, it is unnecessary to answer question 3 and 4.

S U M M A R Y

Section 7 of Article V of the current General Appropriation Act relating to "Employees Vacation and Leaves" is not applicable to State officials.

Yours very truly,

  
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APPROVED:  
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