



# Texas Military Facilities Commission

2200 West 35<sup>th</sup> Street, Building 64 Austin, Texas 78703-1222

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DEC 18 2003

OPINION COMMITTEE

December 17, 2003

The Honorable Gregg Abbott  
Attorney General of Texas  
Attention: Nancy Fuller, Chief  
Opinions Committee  
Price Daniel Building, 6th Floor  
Austin, TX 78701

CERTIFIED MAIL, RETURN RECEIPT

REQUESTED # 7002 2410 0004 8768 2496

FILE # ML-43382-03

**RQ-0149-GA**

I.D. # 43382

Dear General Abbott:

The Texas Military Facilities Commission at its December 5, 2003 meeting authorized the undersigned to request this opinion relating to its responsibility, if any, to make a lump sum payment for accumulated sick leave to a terminated employee. The question presented affects the public interest.

A former employee whose employment with the Commission was terminated has requested payment for accrued sick leave to the date of his termination. The employee cites MW-427 (1982) in support of his claim. The Commission is uncertain that MW-427 presently applies.

The facts upon which this request is based are as follows: The employee's last day of work for the Commission was July 19, 2002. The Commission began paying the employee for his accrued sick leave July 22, 2002, upon receipt of notice that the employee was ill and unable to perform his work. These payments continued until the employee was notified of his pending termination, at which time he was authorized to use all remaining compensatory time prior to termination in lieu of forfeiting the accrued compensatory time. He was officially terminated February 28, 2003. On that date the employee had 351.30 hours of accrued sick leave.

The vacation and sick leave provisions discussed in MW-427 were contained in the General Appropriations Act applicable to 1982. Leave Provisions for State Employees are now codified in Chapter 661 of the Government Code. (Acts 1999, 76th Leg. § 19, eff. Sept. 1, 1999).

For example, Section 661.033 expressly directs the state to pay to the estates of certain state employees who die while employed by the state all of the employees' accumulated leave time and one-half of the employees' accumulated sick leave or 336 hours of sick leave, whichever is less.

Section 661.062 entitles a state employee who has been employed for six continuous months who separates from state employment to be paid for accrued vacation to the date of separation, provided that the employee does not return to work to employment with the state during the 30-day period immediately following the date of separation.

Section 661.204 entitles a state employee who transfers from one state agency to another agency to a credit by the agency to which the employee transfers for the employee's accumulated sick leave.

Section 661.205 provides for the restoration of sick leave balances for employees who return to employment with the state within twelve months after the end of the month in which the employee separates from employment.

The Commission believes that the Comptroller of Public Accounts and the State Auditor's Office will be interested in this opinion request. The former employee is interested in this request as well, but to protect his confidentiality, this request does not reveal his name. We are furnishing a copy of this request to him

If I can provide you with additional information, please contact me by telephone at 782-6905.

Respectfully,

A handwritten signature in cursive script that reads "John A. Wells".

John A Wells  
Executive Director  
Texas Military Facilities Commission



# Texas Military Facilities Commission

2200 West 35<sup>th</sup> Street, Building 64 Austin, Texas 78703-1222  
www.tmf.state.tx.us

January 7, 2003

The Honorable Gregg Abbott  
Attorney General of Texas  
Attention: Nancy Fuller, Chief  
Opinions Committee  
Price Daniel Building, 6th Floor  
Austin, TX 78701

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OPINION COMMITTEE

FILE # RQ-00149-GA  
I.D. # 43414

Dear General Abbott:

The Texas Military Facilities Commission recently requested your opinion relating to its authority to make a lump sum payment for accumulated sick leave to a terminated employee. You have designated this request as RQ-0149-GA. Upon receipt of a copy of the request, the affected former employee notified the Commission as follows:

Your opinions request letter of December 17, 2003 contains an erroneous statement and a serious omission. My claim cited Attorney General Opinion JM-956, which reaffirmed Opinion MW-427. I feel that the failure to mention JM-956 from your opinion request taints any opinion that may be rendered concerning my case. Since the Attorney General allows input from people affected by opinions I will furnish them with this information.

The Commission did not intend to mischaracterize the opinion upon which the former employee relies. The summary of JM-956 (1988) at 6 states that a "state employee who has completed his final day of duty with an agency but who remains of the payroll to expend his accrued vacation time may use sick leave for his own bona fide illness or for that of a member of his immediate family." JM-956 does not appear applicable to this request because RQ-0149-GA concerns the Commission's authority to make a lump sum payment for sick leave accrued to the date of termination, to a terminated employee who is no longer on the payroll when the employee has previously been paid a lump sum for accrued vacation time.

In any event the Commission wishes to stress that it does not consider its position adverse to that of the former employee. The Commission is willing to pay for the sick leave accrued as of the date of his termination if the Commission is authorized or required by law to do so.

Sincerely,

John Wells  
Executive Director  
Texas Military Facilities Commission

cc: David Ahrendt