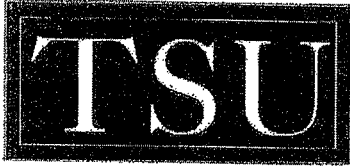


RECEIVED
APR 04 2019
OPINION COMMITTEE



Texas Southern University
Office of the President
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Austin.Lane@tsu.edu | www.tsu.edu

April 4, 2019

RQ-0279-KP

Via E-mail @ opinion.committee@oag.texas.gov

Office of the Texas Attorney General
Attention Opinion Committee

FILE # ML-48526-19

I.D. # 48526

Subject: *Request for Attorney General Opinion Regarding Vacation Leave – TSU Academic Administrative Employees*

Dear Attorney General Opinion Committee:

Pursuant to Section 402.042(b)(6) of the Texas Government Code, Texas Southern University would like to request an Attorney General Opinion regarding the above subject. More particularly, we would like an opinion regarding the appropriate rate of pay for accrued but unused vacation leave when these employees separate from their academic-administrative positions.

Our request for an opinion is based primarily on the following hypothetical fact scenario:

Professor X (9-month appointment) takes on an administrative position in addition to her teaching duties in 2002. The administrative position pays \$20,000/yr. in addition to her existing teaching salary of \$60,000/yr. After three years, Professor X separates from the administrative duties to focus solely on teaching and reverts back to her \$60,000 annual salary.

Thereafter, Professor X takes on administrative positions similar to year 2002 in 2007-2008 and 2012-2013 on an interim basis in addition to her teaching duties. Such interim administrative positions were for different rates of pay. Starting in 2014, Professor X no longer has any administrative duties and solely continues in her capacity as a 9-month professor.

In 2019, the University and Professor X want a payout of her accrued yet unused vacation leave.

ISSUES PRESENTED

1. a.) Must a university remunerate a faculty member for accrued and unused vacation hours who separates from administrative duty as a holistic sum (*i.e.*, the faculty pay and administrative pay as one sum); or
b.) Must a university remunerate a faculty member for accrued and unused vacation hours based only upon the additional salary paid for the administrative position.
2. In a scenario wherein a professor does not want to be paid for accrued and unused vacation at the time of separation from administrative duties, when is the appropriate time for a university to provide the payout?

LAW, CONSIDERATIONS, AND BRIEF

Section 661.152(a) of the Texas Government Code ("TGC") provides in pertinent part that a state employee is entitled to vacation in each fiscal year, except for a state employee who is an employee of an institution of higher education and is "not employed to work at least 20 hours a week for a period of at least four and a half months" or is a "faculty member employed for a period of fewer than 12 months." TSU's Provost, Deans, Associate Deans, Department Chairs, etc. are state employees who are employed full time for 12 months each fiscal year. Accordingly, such administrative positions are entitled to vacation leave.

Section 661.152(d) of the TGC further provides that eligible state employees accrue vacation leave and may carry over vacation leave from one fiscal year to the next. TSU's policy mirrors the TGC in that regular staff employees and faculty on a 12-month appointment are entitled to paid vacation each fiscal year.

PAYMENT FOR ACCRUED BUT UNUSED VACATION LEAVE

Section 661.062(a) of the Code provides in part that a "state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who resigns, is dismissed, or otherwise separates from state employment by an institution of higher education is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation." Sub-section (b) [2] clarified that "separation from state employment" for vacation leave payment purposes includes moving from a position that accrued vacation leave to a position that does not accrue vacation leave. For example, a Department Head might resign as a Department Head and continue teaching for a nine (9) month faculty position. Section 661.063(a) of the TGC provides that the payment for the accrued balance of vacation leave is computed by multiplying the employee's rate of compensation on the date of separation from the vacation accruing position by the total number of accrued but unused vacation leave hours.

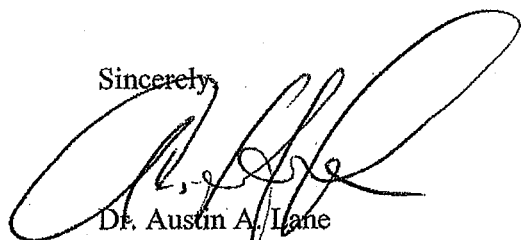
Furthermore, the TGC details that separation from employment includes an employee who "holds two or more positions, and separates from one that accrues vacation time, if the agency

agrees to pay for the accrued balance of the employee's vacation time." This further complicates the matter for our Administrative Faculty members as whether they have two positions or one position with additional responsibilities. The matter is essential as the computation of vacation time could be for just the additional salary paid the faculty member or for the entire salary of the faculty member for both teaching duty and administrative duty as a whole.

In conclusion, the issues we are requesting Attorney General's Opinion are as follows:

1. a.) Must a university remunerate a faculty member for accrued and unused vacation hours who separates from administrative duty as a holistic sum (*i.e.*, the faculty pay and administrative pay as one sum); or
b.) Must a university remunerate a faculty member for accrued and unused vacation hours based only upon the additional salary paid for the administrative position.
2. In a scenario wherein a professor does not want to be paid for accrued and unused vacation at the time of separation from administrative duties, when is the appropriate time for a university to provide the payout?

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Lane', written over the typed name.

Dr. Austin A. Lane
President, Texas Southern University