



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 9, 1975

Opinion No. 75- 154

Mr. W. Keith Weltmer
Secretary of Administration
The Statehouse
Topeka, Kansas 66612

Dear Mr. Weltmer:

You have requested an opinion from this office concerning the following question: If a person is terminated on May 31, 1974, would the salary payment received by him on January 1, 1974, represent earnings from November 18, 1973, through December 17, 1973, or would it represent earnings from December 1, 1973, through December 31, 1973? You indicate that this question is being raised because State employees who retired between January 1, 1974, and June 30, 1974, are faced with an earnings test applied by the Social Security Administration that compares wages reported on a 1974 W-2 Form and the employees actual earnings for calendar year 1974.

The applicable statutory authority, K.S.A. 75-3172 provided in pertinent part at all times relevant hereto as follows:

"(c) Except as otherwise provided by law, each officer and employee of a state agency shall be paid for the proportion of his annual salary earned for the period commencing on the eighteenth day of one month and ending on the seventeenth day of the following month, both such days inclusive, and as soon as practicable after the end of each month.

(d) For budget purposes each payment of annual salary shall be charged to appropriations for the fiscal year in which the last day of the pay period occurs.

(e) Commencing with salary payments due on August 1, 1973, the director of accounts and reports shall compute and make salary payments in accordance with this act. For employees of record on June 30, 1973, a full month's

proportion of the employees' annual pay shall be paid for the monthly period ending on July 17, 1973, notwithstanding such period is shorter than the normal calendar month. Any employee who separates from state service during the period from July 1, 1973 through June 30, 1974, shall have his terminal pay computed as though this section had not been amended by this act, but had remained in effect unchanged."

[Emphasis added.]

For the reader's future reference, the legislature amended K.S.A. 75-3217 at Chapter 390, Section 22 of the 1974 Session Laws by deleting, in addition to other subsections, (e) through (c) above. Furthermore, the entire statute has now been transferred by the Revisor's Office effective July 1, 1974, and now appears in its entirety at K.S.A. 75-5515 (Supp. 1974).

As the underlined portion of subsection (c) above indicates, the employee is paid that proportionate amount of his annual salary earned for the time period commencing on the eighteenth of one month and ending on the seventeenth of the subsequent month. The construction of this statutory language is not subject to any apparent ambiguity. It is clear that irrespective of when the payroll warrant is actually issued, it still represents compensation for what he has . . ."earned for a period beginning on the eighteenth of one month and ending on the seventeenth of the following month"

You inquire whether the underlined last sentence of former subsection (e) above may have altered this conclusion as it affects any employee who separates from state service during the period July 1, 1973, through June 30, 1975. Insofar as these particular employees are concerned, the dates covered by their payroll period are to be determined according to the provisions of former K.S.A. 75-3172 as it existed prior to its amendment by Senate Bill 576 as found at Chapter 349 of the 1973 Session Laws. That statute then provided in relevant part:

"(c) Except as otherwise provided by law, each officer and employee of a state agency shall be paid for the proportion of his annual salary earned each month as of the end of such month and as soon as practicable after the end of each month."

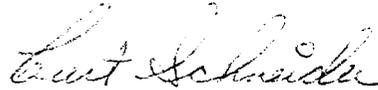
Under this statute, the payroll period would clearly be from the first to end of each month and the compensation received would represent the income earned for that period.

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After consideration of all the above statutory provisions, it is the opinion of this office that the language of the last sentence to subsection (e) must be limited in application to computing the terminal pay of an individual who separates from state service between the specified dates. This language applies only to the computation of the terminal pay due an employee who separates from state service.

Therefore, it is the opinion of this office that the salary payment received by an individual on January 1, 1974, who terminates his state employment on May 31, 1974, should be considered as earnings from November 18, 1973 to December 17, 1973.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/HW/ksn