

Subject FILE  
State Planning  
Legislature 1974  
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STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

May 17, 1974

Opinion No. 74- 162

Mr. Henry Schwaller  
Secretary of Administration  
State Capitol  
Topeka, Kansas 66612

Dear Mr. Schwaller:

Section 1 of 1974 Senate Bill No. 925 states thus in pertinent part:

"Persons retiring from the classified, classified exempt or unclassified service of the state of Kansas who have accumulated one hundred (100) days or more of sick leave shall receive compensation for their accumulated days of sick leave not to exceed thirty (30) days at the time of retirement."

K.A.R. 1-10-6 states in pertinent part as follows:

"Sick leave with pay shall be granted all permanent, probationary and provisional employees, excluding those who are on temporary seasonal or emergency appointments, at the rate of one working day for each full month of service . . . .

(b) Persons employed at a monthly rate shall be entitled to earn one day sick leave credit if such employee is on the payroll 25 days in each calendar month. This shall be construed as a full month of service for this purpose.

(c) New employees employed at a monthly rate shall be entitled to earn one day sick leave the first month if they enter on duty on or before the 10th day of the month.

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"(f) Sick leave with pay may be granted only for the necessary absence from duty because of the personal illness of the employee or legal quarantine."

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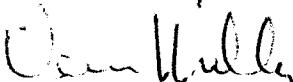
Apparently, because sick leave is earned on the basis of calendar months of service, it is the view of officers of your department that the thirty accumulated days of sick leave which are compensable under the act are to be regarded as calendar days, and not as working days.

The 1974 act calls for and requires compensation for thirty days of accumulated sick leave, persons eligible therefor being those persons "who have at the time of retirement accumulated one hundred (100) days or more of sick leave. "Sick leave with pay" under the department regulations may be granted only at the rate of "one working day" for each calendar month of service. When an employee has accumulated one hundred days or more of such sick leave, he has accumulated the right to be absent from duty because of "personal illness" with pay for one hundred or more days. Under the act, an employee who retires with the requisite accumulation is entitled to be paid for thirty of those accumulated days. These days were and are earned and granted, and were and are accumulated under departmental regulations as working days. It is for thirty of these accumulated days credited to the employee, credited at the rate of one "working day" per month of service, that the retiring employee is entitled to compensation. There is no basis for computing these days on a calendar basis.

Counsel for your department has expressed the view that this 1974 act is ambiguous, and lawfully susceptible to interpretation and construction by a regulation duly promulgated and adopted by the Department of Administration. Any construction of the act contrary to the foregoing is in our view arbitrary and unreasonable, facially unsupported by either the internal logic of the enactment or by existing departmental regulations, under which accumulated sick leave was earned.

Accordingly, it is our firm conclusion and opinion that the thirty days of accumulated sick leave which are compensable under 1974 Senate Bill 925 must be computed as thirty working days.

Yours very truly,

  
VERN MILLER  
Attorney General

VM:JRM:jsm

cc: Franklin Theis  
James Cobler  
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