



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

February 19, 1975

Opinion No. 75- 85

Mr. Lowell Long  
State Director of Personnel  
Division of Personnel  
Department of Administration  
801 Harrison  
Topeka, Kansas 66612

Dear Mr. Long:

You advise that the University of Kansas has submitted a payroll claim on behalf of a faculty member at the University, Mr. Earl B. Shurtz, for sick leave pay. You inquire whether payment of the claim is authorized by law.

We are advised that Professor Shurtz has been employed at the University on a nine-month basis since August 1, 1956. He became ill in late April or early May, 1974, and has not returned to his faculty duties since that time, or at least during the period of time covered by the claim in question here. This claim seeks payment of his salary retroactive to August, 1974, based upon an alleged accumulation of sick leave. Mr. Keith Nitcher, vice-chancellor for business affairs, calculates that based upon the time elapsed since Mr. Shurtz' appointment in 1956, he should have earned a maximum total of 163.5 sick leave days, calculated on the formula for determining sick leave for classified employees.

Mr. Nitcher acknowledges that regulations of the Department of Administration published in the Kansas Administrative Regulations apply only to classified and classified exempt employees. In support of this claim, however, we are referred to action taken by the State Finance Council on February 19, 1971. At that time, the Council received a report of a special subcommittee of the Council, concerning compensation for employees in certain unclassified positions, compensation for which was fixed by the Council. The recommendations of the subcommittee identify four

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different groups of employees, identified in exhibits A through D. The report did not include any unclassified officers or employees of the Board of Regents, or of institutions under the jurisdiction of the Board. The recommendations are limited to those employees and classes of positions identified in the report. Thus, the subcommittee recommended, in paragraph 10 of its recommendations, thus:

"The governing board or other appointing authority is authorized to establish a policy for sick and annual leave benefits for their employees in the unclassified service, such benefits not to exceed those established for employees in the classified and classified-exempt service. In the absence of such policy established by the governing board or appointing authority, sick and annual leave benefits shall be established by the governing board or appointing authority, sick and annual leave benefits shall be extended to unclassified employees on the same basis as is provided in the Civil Service Rules for the classified and classified-exempt service."

The application of this recommendation is governed by the recital at the beginning of the enumeration of recommendations on page 5 of said report, attached to the minutes of the State Finance Council meeting in question:

"Adoption of the following minutes would carry out the recommendations of the Subcommittee with respect to the compensation of positions in the unclassified service which are subject to Finance Council authority:"

Professor Shurtz' position is not a position in the unclassified service to which this recommendation applies, and thus, the entitlement to sick leave in this instance is unaffected by the action of the Finance Council at its February 19, 1971, meeting, adopting this recommendation.

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It is a condition of employment of a person in the classified service that the employee work the number of hours per day and days per week or month as specified by the agency for such position. K.A.R. 1-10-1. Persons who are employed under a contract, such as Professor Shurtz, must satisfy only those conditions of employment specified in the contract. The accumulation of sick leave is a contractual privilege which may be granted by the employer. The University of Kansas, an institution of the State of Kansas, must provide the authority by which sick leave is granted to and accumulated by its unclassified employees. K.S.A. 76-715 states in pertinent part thus:

"The chief executive officer of each university and college shall appoint such employees as are authorized by the board of regents. Employees in the unclassified service shall serve at the pleasure of the chief executive officer of the university or college, subject to policies approved by the board of regents. Unclassified employees shall receive such compensation as is prescribed by the chief executive officer of the university or college within authorizations by the board of regents."  
[Emphasis supplied.]

We find no policy, rule or regulation of the University of Kansas or of the Board of Regents adopted prior to the time of Mr. Shurtz' initial appointment in 1956 which provides any authority for the accumulation of sick leave days commencing in 1956, payment for which is claimed in the submitted voucher. The appointment form we have been furnished is silent on the matter of sick leave. It affords no basis upon which to imply that the appointee in the unclassified service has any claim to the accumulation of sick leave on the same basis as classified employees, or indeed, on any other basis.

The lack of an institutional policy governing the accumulation of sick leave is underscored by the statement contained in the 1973-1974 University of Kansas Faculty Handbook, on page 14, thus:

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"Should a faculty member suffer protracted illness and therefore need to be placed on extended sick leave, the faculty member will normally discuss the circumstances with the appropriate departmental chairperson or dean, upon whose advice the Chancellor will make an appropriate recommendation to the Board of Regents. Such cases are always handled on an individual basis."  
[Emphasis supplied.]

In this instance, there is clearly no express institutional policy, rule or regulation whatever which provides authority to grant, and similarly to accumulate, sick leave by unclassified faculty employees such as Professor Shurtz. Accordingly, we cannot but conclude that there is no authority for payment of the claim in question.

Obviously, temporary absence from duty due to illness will not often be such as to violate the conditions of a faculty appointment or employment contract, and to require reduced compensation for the period in which such absence occurs. The employees' entitlement to continued compensation during such absence is not based upon any right to accumulated sick leave, however, absent any express authority therefor, but upon the fact that the temporary absence does not interfere with the continuing substantial fulfillment of the duties of the appointment or contract. This is not the case here. We conclude that there exists no authority for the payment of the claim in question.

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj

cc: Mr. Keith Weltmer, Secretary  
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