



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

April 22, 1975

Opinion No. 75- 190

Mr. W. Keith Weltmer, Secretary
Department of Administration
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Secretary Weltmer:

On February 19, 1975, this office issued Opinion No. 75-85, addressed to Mr. Lowell Long, Director of Personnel of the Department of Administration, concerning a payroll claim submitted by the University of Kansas on behalf of a faculty member of the University, Mr. Earl Shurtz, for sick leave pay.

In that opinion, we concluded that there being no policy, rule or regulation of the University of Kansas, or adopted by the Board of Regents applicable thereto, prior to the date of Mr. Shurtz' initial appointment in 1956 which provides any authority for accumulation of sick leave pay, there existed no authority on which to honor the claim, there being no basis upon which there could have been earned and credited unused sick leave prior to the submission of the claim.

In that opinion, we pointed out that the lack of an institutional policy governing the accumulation of sick leave was underscored by the statement contained in the 1973-1974 University of Kansas Faculty Handbook, on page 14, as follows:

"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 advise the Chancellor will make an appropriate recommendation to the Board of Regents. Such cases are always handled on an individual basis."

Mr. W. Keith Weltmer, Secretary
Page Two
April 22, 1975

Since that time, the Board of Regents has acted expressly to approve payment of this and other claims. The pertinent minute, from its March 21, 1975, meeting, reflects that the Board received a request from Chancellor Dykes that the Board authorize the University of Kansas "to pay four faculty members sick leave in accordance with the University's policy of treating extended sickness on a case-by-case basis with specific Board approval for each payment." The request pointed out that the "number of days requested for each member would not exceed one day per month on the payroll accumulated total." Accordingly, a motion was adopted by the Board that authorization be given to the University to make sick leave payments "within calculated eligibility" to four faculty members.

You question whether the motion adopted by the Board pursuant to the so-called "sick leave policy" as set out above is sufficient authority to authorize payment of the claims for sick leave which have been submitted to you.

The letter of April 8, 1975, to Mr. Long from Mr. Keith Nitcher, Vice-Chancellor for Business Affairs, states that calculations for sick leave for Professors Shurtz and Wright are based on the number of months on the payroll in accordance with the formula for accruing sick leave allowed for classified employees.

The renewed submission of this claim suggests that there has been some misconstruction of the prior opinion issued by this office dealing with this question. The conclusion therein that there was no authority for payment of the claim for sick leave pay submitted on behalf of Professor Shurtz was not based upon any lack of action thereon by the State Board of Regents. That opinion was based on the lack of any policy whereby a faculty member might accumulate over his years of service unused sick leave credits.

There is no authority for payment of sick leave unless some right thereto is established as a part of the contract of employment. If the contract so provides, the employee may be credited with unused sick leave, and when extended illness occurs, the employee enjoys the right to continued compensation during the period covered by the accumulated leave. Moreover, under K.S.A. 1974 Supp. 75-5517,

"Persons retiring from the classified,
classified exempt or unclassified service
of the state of Kansas who have accumulated

Mr. W. Keith Weltmer, Secretary
Page Three
April 22, 1975

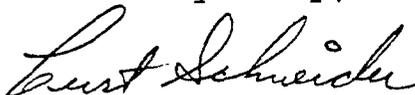
one hundred (100) days or more of sick leave shall receive compensation for their accumulated days of sick leave not to exceed thirty (30) days at the time of retirement."

Nothing in the motion adopted by the Board suggests on what basis sick leave was earned and credited to the faculty members whose claims are in question here. Indeed, clearly, this is not an instance in which sick leave was earned and credited, but a ad hoc decision by the Board to authorize payment at the rate of regular compensation to four faculty members who have been caused to be absent from their duties due to prolonged illness, the payment being denominated payment for "sick leave" when in fact and in law there is no such leave to which the members in question are entitled as a matter of right.

The policy set forth in the Faculty Handbook, as set out above, has been advanced as a basis for the payments in question. You question whether this policy establishes a policy of sick leave with pay, or whether it merely establishes the right of a faculty member to request that his job status be protected by applying for, and being granted, on a case-by-case basis, a leave of absence without pay, with the right to return if the disability terminates within the granted sick leave. Clearly, in our opinion, the policy is not one which provides any basis for the accumulation of credit for unused sick leave, and, likewise, any authority for payment of compensation based on such accumulation. As a University policy, we construe it merely as providing a means whereby a faculty member who suffers prolonged illness may seek and be granted leave without pay during such disability, with the consequent right to return to duty if the disability terminates during the term of the leave granted.

We cannot but conclude that the motion adopted by the Board of Regents provides no authority for payment of the claims submitted.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj