

MAINE STATE LEGISLATURE

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February 13, 1948

To Fred M. Berry, State Auditor
Re: Salary Adjustments in Lieu of Holiday Time

I have your memo of February 4th relating to the authority of the Department of Personnel to make salary adjustments for employees of the Reformatory for Men in lieu of holiday time lost during 1947. You also enclose a copy of a memo which lists the names and amounts payable to employees of that institution, and also a copy of your memorandum of January 13th, addressed to Mr. Vaughan, Director of Personnel.

After reading your memo of February 4th to myself and your memo of January 13th to Mr. Vaughan, I am of the opinion that the hours of work for institutional employees can be fixed by schedule agreed to by the Commissioner of Institutional Service and the State Personnel Board. You must consider the fact that in our State penal institutions the guards have to be on duty at all times. If one guard is entitled to a holiday, but another guard is taken ill on the holiday to which the first guard is entitled, and the first guard has to give up his holiday and still work his full week under the schedule, I believe that he is entitled to pay for that holiday which he sacrificed because of someone's illness or some other unforeseen event which broke up his schedule and deprived him of his holiday.

You question the propriety of this and I believe you suggested orally that the head of the institution should give the employee another day, rather than give him pay for the holiday to which he was entitled but upon which he worked for some other guard who was supposed to work on said holiday.

There is ample authority in the statutes and the Personnel Rules and Regulations for handling this situation this way.

You cite an opinion from former Attorney General Cowan in his Report for 1941-1942, which you state was on a comparable situation, in answer to a question propounded by Mr. Hayes, then Director of Personnel, concerning payment for earned vacation time. I call your attention to the amendment to Part 3 of Rule 11, which reads as follows: "Unused vacation leave may be accumulated up to but not exceeding the normal amount of vacation allowed over a two-year period and may be granted to employees for such time or times and in such amounts as shall be determined by the department head involved." This amendment was approved by the Governor on November 11, 1946.

Furthermore, the question propounded by Mr. Hayes . . . was in regard to vacation pay due a deceased employee during the year.

It is my opinion that vacation pay that has not been used is a matter between the State and the employee while he is living and does not revert to his heirs or legal representatives after his death, but only applies to his separation from the service. While he is connected with the service, he is entitled to unused vacation leave on an accumulated basis.

I agree with Mr. Cowan when he states, on page 81, that "Leave of absence is not a property right of the employee, but is a privilege granted by the State."

I might add that this is a privilege granted by the legislature and should be exercised during the life of the employee. I agree with Mr. Cowan that at the death of the employee there is nothing that would justify the Director of Personnel in ordering payment to the said employee's estate of any amount except such as might be due for service performed in his lifetime.

The proposition with which we are dealing at the State Reformatory is a right and privilege granted by the legislature, which is now being exercised by the employee upon agreement with the head of the department and the Director of Personnel.

Ralph W. Farris
Attorney General

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