

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
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AUGUSTA, MAINE 04333

June 14, 1983

George J. Rainville  
State Auditor  
State Office Building  
Augusta, Maine 04333

Dear Mr. Rainville:

This letter responds to your request for advice as to whether constitutional officers may accumulate vacation leave and sick leave, at what rate that leave accumulates, and what use can be made of accumulated vacation time and sick leave upon the retirement of constitutional officers. After a review of the relevant statutes, it is the opinion of this Office that constitutional officers are entitled, by statute, to vacation time and sick leave. The minimum rates at which vacation time and sick leave accrue are provided by statute, as are the maximum number of days which may be accrued. Finally, upon retirement, accrued vacation time and sick leave may be used to extend length of service, subject to a statutory maximum.

Constitutional officers, that is, those officers who, under the Constitution, are chosen by the Legislature, are specifically made part of the unclassified service by 5 M.R.S.A. § 711(1)(B) (1979). That being the case, their eligibility to accumulate vacation and sick time, and the amounts of and rates at which such time may accrue, is governed by 5 M.R.S.A. § 16(1) (1979). That section provides:

Classified and unclassified state employees shall be permitted to accumulate at least the vacation time listed under the following schedule:

Longevity of employee

Rate of accumulation

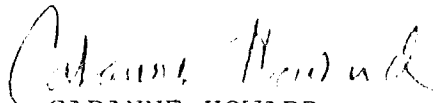
|                  |                                    |
|------------------|------------------------------------|
| 0-5 years        | 1 day per month of employment      |
| 6-10 years       | 1 1/4 days per month of employment |
| 11-15 years      | 1 1/2 days per month of employment |
| 16-20 years      | 1 3/4 days per month of employment |
| 20 years or more | 2 days per month of employment     |

Section 16 further provides that sick leave may be accumulated at a minimum rate of 1 day per completed month of State service.\*/ Finally, it establishes the minimum number of days of vacation and sick time which may be accumulated: 24 days of vacation time for those officers with less than 15 years of service, and 30 days for those with more, and 90 days sick time regardless of length of service.

As to the use of accumulated vacation time and sick leave upon the retirement of constitutional officers, 5 M.R.S.A. § 1094(16) (1979) controls. Constitutional officers who have elected to join the State Retirement System may use up to 90 days of "accrued sick leave or unused vacation leave or a combination of both," to extend their length of service upon retirement. Id.

I hope this answers your questions. Please feel free to reinquire if further clarification is necessary.

Sincerely,



CABANNE HOWARD  
Assistant Attorney General  
Chief, Opinions Division

CH/ec  
Enc.

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\*/ It should be noted that Section 16 provides only the minimum rates at which vacation time and sick leave accrue. As indicated in the attached opinion of this Office, the constitutional officers may accelerate the rate of their vacation and sick leave accrual above the minimum. Op. Me. Att'y Gen. (July 5, 1977). As a rule, however, they have not done so beyond the rate at which the most senior member of their respective departments accumulates vacation and sick time.