



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

Affirmed by \_\_\_\_\_

. February 25, 1972

Dr. David Wade  
Commissioner  
Texas Department of Mental  
Health and Retardation  
Box 12668, Capitol Station  
Austin, Texas 78711

Opinion No. M-1075

Re: Whether State employees covered under the provisions of Article II, Section 7 of the present appropriation bill are entitled to be compensated for accumulated vacation in the event of their resignation, dismissal or separation from State employment.

Dear Dr. Wade:

You request our opinion on how accumulated vacation time should be treated when an employee resigns or is dismissed or separated from State employment.

This office has issued a number of opinions on this question. We are not now called upon to question their correctness when written based on the prevailing law existing at the time they were issued.

However, in 1969 the 61st Legislature enacted House Bill 774 (codified as Article 6252-8a, Vernon's Civil Statutes) and changed the language in the appropriation bill that governed vacation time.

In order to compare the language change in vacation entitlement that occurred in 1969, we copy the relevant portions of the general appropriation bills that were passed by the 60th Legislature and the 61st Legislature.

Article V, Section 7 of the General Appropriations Act of the 60th Legislature (Acts 60th Leg., 1st C.S., 1968, p. 363), in its relevant portion, reads as follows:

"Sec. 7. EMPLOYEE VACATION AND LEAVES.  
a. Annual employees of the State shall, without deduction in salary, be entitled to a vacation that is equivalent to not more than one normal working day for each month of service,

not to exceed a total vacation of two normal work weeks in any one fiscal year."

Article V, Section 7 of the General Appropriations Act of the 61st Legislature (Acts 61st Leg., 2nd C.S., 1969, p. 1015), in its relevant part, reads as follows:

"Sec. 7. EMPLOYEES VACATION AND LEAVES.  
a. Annual employees of the State shall, without deduction in salary, be entitled to a vacation of two normal work weeks in any one fiscal year, such entitlement to be accrued proportionately for each month of service during the year." (Emphasis added.)

This identical language is also stated in the current General Appropriation Act (Acts 62nd Leg. R.S., 1971, p. 3796).

We note that the phrase "such entitlement to be accrued proportionately for each month of service during the year" was added by the 61st Legislature. The key word is accrued.

Webster's Third New International Dictionary defines the word accrue as follows: "To come into existence as an enforceable claim; vest as a right."

The 61st Legislature also enacted Article 6252-8a, Sec. 2 of which reads:

"Upon the death of a state employee, the state shall pay his estate for all of the employee's accumulated vacation leave and for one-half of his accumulated sick leave. The payment shall be calculated at the rate of compensation being paid the employee at the time of his death." (Emphasis added.)

This Act became effective on May 14, 1969.

Our opinion is that vacation entitlement is a benefit and right that accrues proportionately for each month of service during the year and becomes a vested right of the employee that cannot be destroyed or impaired by his resignation, dismissal or separation from State employment. It is a right that becomes vested in him as it is earned and a State employee should be compensated for all vacation time duly accrued. The right to receive pay for this accumulated vacation leave survives to his estate. These accumulations of rights are limited by statute. See Attorney General Opinion M-984 (1971).

The right accrues under the statutes and contract of employment. It is a contract right protected by both the Texas and United States Constitutions. Texas Constitution, Art. I, Sec. 16; United States Constitution, Art. I, Sec. 10; Mellinger vs. City of Houston, 68 Tex. 37, 3 S.W. 249, 252 (1887).

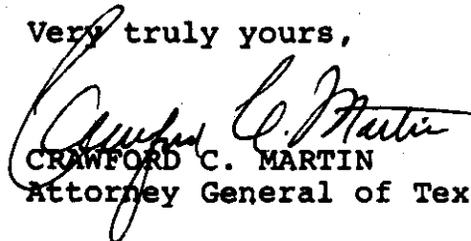
Our Opinions M-731 (November, 1970) and M-811 (March, 1971) recognized that vacation entitlement was now a right granted by statute and held that such right passed upon the death of the employee to his estate.

It is, therefore, the opinion of this office that a State employee is entitled to be paid for all vacation time duly accrued and all resignations, dismissals or separations from State employment must be accomplished effective on a date which will permit the employee to be paid for his accumulated vacation. All opinions on this subject prior to enactment of Article 6252-8a, are no longer applicable.

SUMMARY

Accrued vacation time of state employees is a vested right of those employees and of their estates.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Linward Shivers  
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APPROVED:  
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(M-1075)

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