



**THE ATTORNEY GENERAL
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AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

November 1, 1972

Honorable Robert S. Calvert
Comptroller of Public Accounts
State Finance Building
Austin, Texas 78701

Opinion No. M-1252

Re: Must a State employee who resigns, is dismissed, or is separated from State employment be paid for all duly accrued vacation time, and related questions.

Dear Mr. Calvert:

Your request for an opinion reads as follows:

"I hereby request your official opinion in answer to the following questions:

"1. Must a State employee who resigns, is dismissed, or separated from State employment be paid for all duly accrued vacation time?

"a. If the above answer is in the affirmative, when should the payment be made?

"2. Must the salary of a line-item employee be paid solely from a line-item appropriation or may he be paid in whole or in part from monies which the Legislature has prohibited in whole or in part to be paid for salary or wages?

"a. Sec. 10. LIMITATIONS ON USE OF OTHER EXPENSE FUNDS FOR PAYING SALARIES AND WAGES. Funds appropriated in Articles I, II, and III of this Act, or for the Central Education Agency in Article IV of this Act, in items designated for consumable supplies and materials, current and recurring operating expense or capital outlay shall be expended only for items set out in the Comptroller's Manual of Accounts, Expenditure Classification, effective November 1, 1965, as amended, and numbered from 10 to 19 for 'consumable supplies and materials,' 20 through 28 for 'current and recurring operating expense,' and 60 to 69 for 'capital

outlay,' It is further provided that such terms shall not include expenditures for personal services including salaries and wages, unless the language of those items explicitly authorizes such use."

Article 6252-8a, Vernon's Civil Statutes, provides in part:

"Sec. 2. 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.

"Sec. 3. Funds appropriated for salaries to the department or agency for which the employee worked shall be used in making payments provided for by this Act."

Section 7 of Article V of the current General Appropriation Act provides in part at page V-34:

"If a State employee transfers directly from one State agency to another, he shall be entitled to credit with the newly employing agency for his accumulated but unused vacation entitlement, provided that his employment with the State is uninterrupted. A State employee who resigns, is dismissed, or separates from State employment shall be entitled to be paid for all vacation time duly accrued." (Emphasis added.)

The underlined portion of the above quoted rider did not appear in the General Appropriation Act beginning September 1, 1971; instead it was provided:

"If a State employee transfers directly from one State agency to another, he shall be entitled to credit with the newly employing agency for his accumulated but unused vacation entitlement, provided that his employment with the State is uninterrupted. No employee of the State shall be granted terminal annual or vacation leave subsequent to the effective day of the employee's

resignation, dismissal, or separation from State employment." (Emphasis added.)

Accrued vacation entitlement is a vested right of State employees and of their estates. Attorney General's Opinion M-1075 (1972) and authorities cited therein.

It is now specifically provided that a State employee who resigns, is dismissed or separates from State employment "shall be entitled to be paid" for all vacation time duly accrued. Therefore it is our opinion that an individual who is no longer on a State payroll has not been fully paid all the compensation for services rendered the State that he is legally entitled to until such individual has been paid for all vacation time which has accrued to such individual.

In answer to your first question you are therefore advised that a State employee who resigns, is dismissed or separated from State employment must be paid for all duly accrued vacation time. Such payment is due and payable on the date the State employee resigns, is dismissed, or is separated from State employment, which should be submitted on the monthly payroll for the month in which the separation will occur; i.e., employment terminated midnight December 31st, payment is submitted on the December payroll.

Article 6813b, Vernon's Civil Statutes, provides in part:

"From and after the effective date of this Act, all salaries of all State officers and State employees, including the salaries paid any individual out of the General Revenue Fund, shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act. . . ."

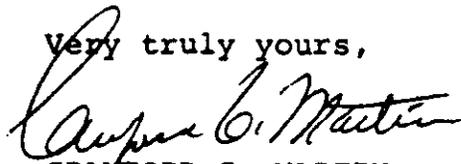
Since payment for all duly accrued vacation time is payment for services rendered, it is our opinion that such payment constitutes salaries within the meaning of Article 6813b. Therefore such payment may only be made from funds made available for expenditure by the Legislature in the Appropriations Act for salaries; i.e., Attorney General Department appropriation, payment for accrued vacation for Assistant Attorney General, may be paid from Item 6 or Attorney General's Operating Fund of the current Appropriations Bill. Employees for whom line item appropriations are made may be paid for accumulated vacation time from other salary funds. You are accordingly

advised that such payment is subject to the limitation provided in Section 10 of Article V of the current General Appropriations Act relating to limitations on use of other expense funds for paying salaries and wages quoted in your request.

S U M M A R Y

A State employee who resigns, is dismissed, or separated from State employment must be paid for all duly accrued vacation time and such payment may be made from any appropriated funds available for the payment of salaries or wages.

Very truly yours,



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