



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

December 15, 1972

Hon. J. C. Dingwall
State Highway Engineer
Texas Highway Department
Austin, Texas 78701

Opinion No. M-1281

Re: Whether an employee of the Texas Highway Department occupying one of the Line Item positions covered by Item 2 through 22 in the current Appropriations Act to that Department who resigns, or is dismissed or is separated from State employment be paid for accumulated vacation time out of either Items 23, 24 or 26 of that appropriation, and related questions?

Dear Mr. Dingwall:

Your request for an opinion asks the following questions:

"1. Can an employee occupying one of the Line Item positions covered by Item 2 through Item 22 in the current Highway Department Appropriation, who resigns, is dismissed, or is separated from State employment, be paid for accumulated vacation time at the time of separation, out of funds appropriated in Item 23 or 24 or 26?

"2. Can a Line Item position which is vacated, as described above, be filled on the following day at the salary for the particular Line Item?"

Items 2 through 22 of the appropriation to the Texas Highway Department contained in the current General Appropriations Act are line item appropriations for salaries of employees of the Texas Highway Department.

Items 23, 24 and 26 read as follows:

"For the Year Ending
August 31,
-- -- -- 1973 -- -- --

- | | |
|--|-------------------|
| "23. Salaries of Classified Positions, estimated to be | 92,898,207 |
| "24. Hourly Wages and Professional Fees and Services, estimated to be | <u>60,839,035</u> |
| "26. For all other operating expenses involved in establishing, planning, constructing, and maintaining a system of State Highways as contemplated and set forth in Chapter I, Title 116, Revised Civil Statutes of Texas, 1925, and Chapter 186, General Laws, Thirty-ninth Legislature, Regular Session, and amendments thereto, to pay refunds authorized by law, and to pay court costs in suits involving the Highway Department, estimated to be | 527,390,091" |

It was held in Attorney General's Opinion M-1252 (1972) that employees for whom line item appropriations are made may be paid for accumulated vacation time from other salary funds. This holding was reiterated in Attorney General's Opinions M-1279 (1972) and M-1280 (1972).

Item 2 provides for the salary of the State Highway Engineer, and Items 3 through 22 provide for the salaries of various other engineers and departmental directors. The occupants of all of the positions provided for in Items 2 through 22 are employees, not officers. Dunbar v. Brazoria County, 224 S.W.2d 738 (Tex.Civ.App. 1950, error ref.).

Items 23 and 24 are appropriations from other salary funds. Item 26 is not an item of appropriation for salaries.

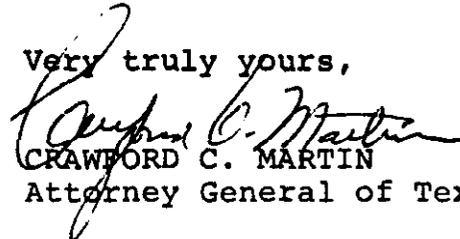
You are accordingly advised in answer to your first question that an employee occupying one of the line item positions

covered by Item 2 through Item 22 of the appropriation to the Highway Department in the current General Appropriations Act may be paid for accumulated vacation time at the time of separation out of funds appropriated in Item 23 or Item 24. In answer to your second question, you are advised that where a line item position is vacated, such position may be filled on the following day at the salary provided for in the particular line item appropriation.

S U M M A R Y

An employee occupying a line item position covered by Item 2 through Item 22 of the appropriation to the Texas Highway Department may be paid for accumulated vacation time at the time of separation out of funds appropriated in Items 23 or 24 of the appropriation to the Highway Department. Where a line item position is vacated, such position may be filled the following day at the salary for the particular line item appropriation.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by John Reeves
Assistant Attorney General

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