Opinion No. 58-173

August 25, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P Whittaker, Assistant Attorney General

TO: Mrs. Blanche G. Quintana, State Personnel Director, Santa Fe, New Mexico

QUESTION

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Is a temporary employee of the State entitled to military training leave provided by statute?

CONCLUSION

No.

OPINION

ANALYSIS

Your question requires construction of Section 9-9-10, N.M.S.A., 1953, which provides as follows:

"That all state, county and municipal employees who are members of organized units of the army or air national guard or army, air force, navy, or marine reserves, shall be given not to exceed fifteen (15) days military leave with pay annually when they are ordered to active duty training with such organized units, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled."

In the course of your duties as Personnel Director, and in connection with the classification of personnel of the Executive Department of the State, we understand that you have developed various definitions, including the following:

"7. **Permanent Employee** means an employee whose permanent status has been approved at the completion of the probationary period for his class.

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10. **Probationary period** means the first six months of employment beginning with the date of original appointment to a permanent position.

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16. **Temporary Employee** means an employee appointed for a limited period of time."

The question is whether a temporary employee, as so defined, is nonetheless entitled to military training leave by virtue of Section 9-9-10, supra.

We conclude that this does not follow. We find nothing in the context which evidences a legislative intent to consider such temporary personnel in providing for military training leave for public employees. The term, "employee" is not a word of art, but takes color from its surroundings, so that its scope must be determined often from the context in which it is used. However, the term generally denotes regular employment as distinguished from casual, incidental or occasional employment. See 30 C.J.S., Employee, pp. 226 -- 227. Permanent employment is said to mean employment for an indefinite, continuous period (30 C.J.S., Employment, p. 234), while the word "temporary" is defined as that which is to last for a limited time only.

It is apparent that the legislative objective in enacting Section 9-9-10 was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. To meet this situation, the Legislature provided for not to exceed fifteen days military leave, **annually,** for such employees, such leave to be in addition to **other** leave to which such employees are otherwise entitled. We must consider that the Legislature, in enacting this provision in 1953, was aware that temporary employees were not eligible for ordinary annual leave. We do not think that the Legislature had any intention to permit a person employed for a temporary period of three months, for example, to claim the benefits of Section 9-9-10. On the other hand, an employee otherwise entitled to the benefits of Section 9-9-10 should not be deprived thereof by arbitrary classification as a "temporary" employee and extension of the limited period for which employed.

The construction of the statute adopted, in our view, is in accord with the principle stated by the Court, e.g. in Scott vs. United States, 54 N.M. 34 (1949), at p. 38:

"We are committed to the doctrine that statutes should be construed in the most beneficial way of which their language is susceptible to prevent absurdity, hardships or injustice, to favor public convenience, and to oppose all prejudice to public interests, and although imperfect in form, they should be sustained by the courts if they can be construed to give them sensible effect. (Citations omitted)."

Accordingly, we conclude that the term, "employees", as used in Section 9-9-10, was not intended to include temporary employees within its scope.