

Sheriffs, payment for accrued sick leave

Number: INFORMAL

Date: June 09, 1997

The Honorable Richard D. Roth
Sheriff, Monroe County
5525 College Road
Key West, Florida 33040

RE: SHERIFFS--PUBLIC OFFICERS--PUBLIC EMPLOYEES--authority of sheriff previously serving as deputy to receive payment for sick leave accrued prior to taking office. s. 110.122, Fla. Stat.

Dear Sheriff Roth:

This is in response to your recent request for information regarding whether you are entitled to payment for accrued sick leave under the sheriff's office personnel policy and, if so, the rate of pay that should be considered in calculating payment for such leave.

You state that you were hired as a dispatcher with the Monroe County Sheriff's Office in 1965 and accrued sick leave until the late 1980's when you had attained the rank of major and instructed the payroll office to cease accruing sick leave on your behalf. At that time you had accrued just shy of 2,000 hours of sick leave. In 1979, the sheriff at that time instituted a policy that allowed deputy sheriffs retiring in good standing to be paid 1/8 for sick leave accrued until 1973 and 1/4 for such leave accrued after that date up to a maximum of 480 hours. This policy tracks section 110.122(3), Florida Statutes.

In 1990 you were appointed to be sheriff and then elected in the fall of that year to a two-year term. Subsequently you were elected to two four-year terms, with your current term ending in 2001. You question the appropriateness of your receiving payment for your unused sick leave and the rate of pay that should be used in calculating such payment.

You have provided copies of the department's policy for payment of accrued sick leave, the current one providing:

"c. Compensation for unused sick leave shall be determined in like manner as set forth in Chapter 110.122(3), Florida Statutes:

The payments authorized by this section shall be determined by using the rate of pay received by the (member) at the time of retirement, termination, or death, applied to the sick leave time for which the (member) is qualified to receive the terminal 'incentive pay' under the rules adopted pursuant to the provisions of this section. Rules and policies adopted pursuant to this section shall permit terminal pay for sick leave equal to one-eighth of all unused sick leave credit accumulated prior to October 1, 1973, plus one-fourth of all unused sick leave accumulated on or after October 1, 1973. However, terminal pay allowable for unused sick leave accumulated on

or after October 1, 1973, shall not exceed a maximum of 480 hours of actual payment. While this and other portions of the personnel policy you have provided do not address basic eligibility requirements for participation in pay for accumulated sick leave, section 110.122(1), Florida Statutes, after which you state the department's policy was fashioned, states that such policies are to provide terminal 'incentive' pay for accumulated and unused sick leave to each *employee* upon normal or regular retirement for reason other than disability or upon termination of employment, or to the employee's beneficiary if service is terminated by death, provided such retirement, termination, or death occurs after 10 years of creditable state employment." (e.s.)

Clearly, your tenure as sheriff does not qualify as an employment for which sick leave may be accrued.[1] However, you were employed as a deputy sheriff and accrued sick leave that would be compensable under the personnel policy at the time of your termination. It is the sheriff's responsibility to establish policies for annual and sick leave and the payment of such leave upon resignation or retirement in order to extend these benefits to deputies in the sheriff's department.[2] In this instance, the policy adopted in 1979, allowed deputy sheriffs to be paid for accrued sick time at the time of retirement, termination, or death. Therefore, an examination of the policies in effect at the time of your departure from employment as a deputy sheriff must be made in order to determine the extent of the benefits payable to you.

It does not appear that your subsequent service as sheriff would divest you of the benefits earned during your employment as a deputy. Further, the rate of pay you were receiving at the time of your leaving employment as a deputy would likely be applied in calculating payment of accrued sick leave.

I trust these informal comments will assist you in resolving this matter. Please feel free to contact this office should you have further questions.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

Enclosures

[1] *Cf.* Op. Att'y Gen. Fla. 78-75 (members of the Florida Parole and Probation Commission are officers whose compensation is prescribed by law and who are not subject to the personnel rules applicable to state employees). See *also* s. 145.071, Fla. Stat., prescribing the salary to be paid to each sheriff, and s. 145.17, Fla. Stat., making the compensation provided in Ch. 145, Fla. Stat., the sole and exclusive compensation of the officers whose salaries are provided therein.

[2] See Op. Att'y Gen. Fla. 93-14, in which this office concluded that in the absence of any formal personnel policy authorizing such payments, a sheriff may not authorize payment to the chief deputy sheriff for accumulated annual and sick leave upon termination of the deputy's

employment.