

# OFFICE OF THE ATTORNEY GENERAL



*Examiner of  
Public Accounts*  
80-00314

CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

APR 8 1980

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 634-5150

LEE L. HALE  
DEPUTY ATTORNEY GENERAL  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

Mr. William W. Dillard, Jr.  
Chief Examiner  
Department of Examiners  
of Public Accounts  
State of Alabama  
Montgomery, Alabama 36130

State Employees - Annual Leave -  
Exempt Employees

Employee who has served exclusively  
in exempt classification is not  
entitled to accumulated leave.

Dear Mr. Dillard:

We have your request for an opinion of this office wherein you ask whether an employee who has been only in the exempt classification throughout his career with the State of Alabama with no leave records having been maintained for this employee is entitled to be paid accumulated annual leave upon his termination from state service.

Section 36-26-35, Code of Alabama 1975, provides that persons who are regularly employed by the State and subject to the Merit System are entitled to accumulated leave and Section 36-26-10(b), Code, provides that exempt employees are not subject to the Merit System.

Based on these sections, it is my opinion that employees who have served exclusively in the exempt service throughout their total career with the State would not accumulate annual leave and therefore would not be entitled to be paid for accumulated annual leave when they leave the State.

Mr. William W. Dillard, Jr.  
Page Two

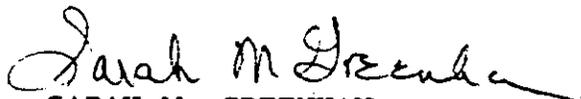
It should be noted that the foregoing applies only to those employees who have never served in any classification except the exempt service. There are exceptions for those employees who have at one time or another served in the unclassified or classified service. Employees in this category are entitled to accumulate leave and be paid for such leave when their State service is terminated. See Section 36-26-10(f), Code of Alabama 1975, and Section XII, Rule 4 of the Rules of the State Personnel Board.

Furthermore, it is difficult to make a general ruling in a technically, legally complicated matter such as this. Each situation will have to be reviewed and evaluated on an individual basis. The provisions of Section 36-26-10(b), specifying those employees who are in the exempt service, must be carefully and precisely applied to each factual situation in determining whether a particular individual is in the exempt service. For instance, you refer to Section 36-26-10(b), Code of Alabama 1975, in relation to certain employees in the Governor's Office. The only employees in the Governor's Office in the exempt service are the governor's private secretary, legal advisor, recording secretary, and those employees paid out of emergency or contingency funds. All other employees of the Governor's Office paid from regularly appropriated funds for the operation of the Governor's Office are in the unclassified service. See Section 36-26-10(c)(2), Code of Alabama 1975.

I trust that I have sufficiently answered your question. If our office can be of further assistance, please do not hesitate to call on us.

Sincerely,

CHARLES A. GRADDICK  
Attorney General  
By-

  
SARAH M. GREENHAW  
Assistant Attorney General

SMG:dss