



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2022-017

October 5, 2022

The Honorable Charlene Fite
State Representative
P. O. Box 7300
Van Buren, AR 72956-0262

Dear Representative Fite:

This is in response to your request for an opinion regarding Ark. Code Ann. § 14-52-107 (Supp. 2021), which governs the accrual and payment of sick leave to municipal law enforcement officers. As background for your request, you state:

Pursuant to current Arkansas law, the Prairie Grove City Council recently passed an ordinance allowing its police officers to accumulate 760 hours of sick leave, or 95 days for 8-hour shifts. Presently, the police force is working 12-hour shifts. They seek clarification regarding accumulation of 95 days of sick leave but only being compensated for 90 days of sick time upon death or retirement.

Against this background, you ask the following question:

Under current Arkansas law, can a municipal police department accumulate up to 95 days of sick time if approved by city ordinance?

RESPONSE

Yes, a municipal police officer may accumulate 95 days of sick leave if that amount of leave has been approved by municipal ordinance. However, payment for unused sick leave upon the officer's retirement or death may not exceed 90-days' salary.

DISCUSSION

The statute you have asked about, Ark. Code Ann. § 14-52-107, governs sick leave for law enforcement officers employed by cities of the first and second class or incorporated towns. I recently interpreted this statute in Op. Att’y Gen. 2020-015, opining that a court would likely construe the term “working day” to mean an eight-hour period, that a municipality could not use a different period of time to calculate accrual, and that the “sixty (60) days’ salary” and “ninety (90) days’ salary” referenced in subsection 14-52-107(c) likely referred to the pay an employee would normally receive over the course of 60 or 90 calendar days.

After Op. Att’y Gen. 2020-015 was issued, the General Assembly amended section 14-52-107.¹ The statute now requires that a “working day” be defined by municipal ordinance.² Additionally, the legislature removed subdivision 14-52-107(a)(2)’s accrual cap. That subdivision now states, “Unused sick leave shall accumulate to a maximum of sixty (60) days unless the city or town by ordinance authorizes the accumulation of a greater amount, except for the purpose of computing years of service for retirement purposes.”³ In other words, there is no longer a cap as to how much sick leave a city or town may, by ordinance, allow a law enforcement officer to accrue. Thus, the answer to your question is “yes.” A municipal law enforcement officer may accrue 95 days of sick leave if there is a municipal ordinance allowing for such accrual.

However, the legislature did not make any changes to subsection 14-52-107(c), which governs the maximum amount of sick leave that may be paid out to a municipal law enforcement officer upon retirement or death. That subsection provides in relevant part, “Payment for unused sick leave in the case of a police officer, upon retirement or death, shall not exceed sixty (60) days’ salary unless the city, by ordinance, authorizes a greater amount, but in no event to exceed

¹ See 2021 Ark. Acts No. 655, § 1.

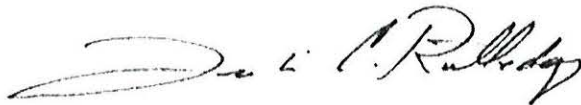
² Ark. Code Ann. § 14-52-107(a)(1)(B) (Supp. 2021).

³ Prior to being amended by Act 655, Ark. Code Ann. § 14-52-107(a)(2) read, “If unused, sick leave shall accumulate to a maximum of sixty (60) days unless the city or town, by ordinance, authorizes the accumulation of a greater amount, *in no event to exceed a maximum accumulation of ninety (90) days*, except for the purpose of computing years of service for retirement purposes.” (Emphasis added).

ninety (90) days' salary."⁴ For reasons explained in Op. Att'y Gen. 2020-015, I believe a reviewing court would likely find that this subsection refers to the pay a municipal law enforcement officer would normally receive over the course of a 60-calendar-day or 90-calendar-day period.⁵

In sum, a municipal police officer may accumulate up to 95 days of sick leave if allowed by municipal ordinance. But upon that officer's retirement or death, the payout for unused sick leave could not exceed the salary that officer would normally earn over a 90-calendar-day period.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge", written in a cursive style.

LESLIE RUTLEDGE
Attorney General

⁴ Ark. Code Ann. § 14-52-107(c), cl. 2.

⁵ I have attached a copy of Op. Att'y Gen. 2020-015 for your convenience.



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2020-015

July 21, 2020

The Honorable Mark Lowery
State Representative
229 Summit Valley Circle
Maumelle, AR 72113-5934

Dear Representative Lowery:

This is in response to your request for an opinion regarding several provisions in Ark. Code Ann. § 14-52-107. You have asked the following questions:

- 1) While many law enforcement officers work ten or twelve hour shifts, Ark. Op. Atty. Gen. No. 2012-078 indicates that the term "working days" is equivalent to an 8-hour period in terms of the provision of vacation leave required by Ark. Code Ann. § 14-52-106. Would the same definition apply to Ark. Code Ann. § 14-52-107(a)(1) and (2)? Are municipalities permitted to use a ten or twelve hour day to calculate the maximum annual accrual of 20 working days and the maximum permitted total accrual of 90 days?
- 2) May police officers be permitted to retain the accrued hours of sick leave previously credited in excess of the statutorily permitted maximum in Ark. Code Ann. § 14-52-107 after the municipal code has been changed to comply with the statute?
- 3) Pursuant to Ark. Code Ann. § 14-52-107(c), which governs the minimum and maximum amount of sick leave that may be paid out to a municipal law enforcement officer upon retirement or death, would a municipality be permitted to pay out 60-90 "working days" (either eight or twelve hour shifts) of sick leave

pay at death or retirement if that exceeds the amount of pay the employee would normally be paid for a 90-calendar-day period (assuming that the municipality had adopted a period of more than sixty (60) days of salary by ordinance)?

RESPONSE

The answer to your first question is “yes.” A court would likely construe the term “working day” to mean an eight-hour period for purposes of Ark. Code Ann. § 14-52-107(a)(1) and (2) and a municipality would not be permitted to use a different period to calculate the accrual. In response to your second question, if an officer accrues sick leave under an ordinance that is determined to conflict with state law, and the accrued hours are determined to exceed the statutorily permitted maximum, an officer could not retain those excess hours. The answer to your third question is less clear. I believe a reviewing court would probably find that a municipality may not pay out sick leave at death or retirement in an amount that exceeds the pay the employee would normally receive during a 90-calendar-day period. However, the statute is not entirely clear in this regard, and legislative clarification is warranted.

DISCUSSION

Question 1: While many law enforcement officers work ten or twelve hour shifts, Ark. Op. Atty. Gen. 2012-078 indicates that the term “working days” is equivalent to an 8-hour period in terms of the provision of vacation leave required by Ark. Code Ann. § 14-52-106. Would the same definition apply to Ark. Code Ann. § 14-52-107(a)(1) and (2)? Are municipalities permitted to use a ten or twelve hour day to calculate the maximum annual accrual of 20 working days and the maximum permitted total accrual of 90 days?

Ark. Code Ann. § 14-52-107 addresses uniform sick leave for law enforcement officers. Subdivisions (a)(1) and (2) of that statute provide as follows:

(a)(1) From and after April 11, 1969, all law enforcement officers, regardless of their titles, such as city marshal, employed by cities of the first and second class or incorporated towns shall accumulate sick leave at the rate of twenty (20) working days per year beginning one (1) year after the date of employment.

(2) If unused, sick leave shall accumulate to a maximum of sixty (60) days unless the city or town, by ordinance, authorizes the accumulation of a

greater amount, in no event to exceed a maximum accumulation of ninety (90) days, except for the purpose of computing years of service for retirement purposes.¹

This statute does not define “working day,” nor have courts interpreted that phrase for purposes of this statute. However, in *Donaldson v. Taylor*,² the Arkansas Supreme Court examined what constitutes a “working day” for purposes of Ark. Code Ann. § 14-53-108, which addresses firefighter sick leave. It construed the term to mean an eight-hour day, rather than a “tour of duty” or a twenty-four hour work shift.³

I believe a court would reach a similar conclusion if asked to construe a “working day” for purposes of law enforcement sick leave under section 14-52-107.⁴ The language of the statute at issue in *Donaldson* (section 14-53-108) is almost identical to the language of section 14-52-107. Furthermore, in response to *Donaldson*, the Arkansas General Assembly amended the law granting sick leave to municipal firefighters.⁵ One of the changes redefined “working day” to mean “that period of time a firefighter is on duty within a twenty-four hour period,” clarifying that “[i]f the firefighter is on duty for twelve (12) hours or more in a twenty-four (24) hour period, a working day shall be not less than twelve (12) hours or more than twenty-four (24) hours.”⁶ Although these amendments nullified *Donaldson* for purposes of computing firefighter sick leave, the legislature did *not* similarly amend section 14-52-107, the corresponding statute governing law enforcement sick leave. Had the

¹ Ark. Code Ann. § 14-52-107(a)(1)–(2) (Supp. 2019).

² 327 Ark. 93, 936 S.W.2d 551 (1997).

³ *Id.* at 95.

⁴ In determining that a “working day” refers to an eight-hour period for purposes of Ark. Code Ann. § 14-52-106, which deals with annual law enforcement leave, Op. Att’y Gen. 2012-078 (the previous opinion you reference in your question) relied on *City of Fort Smith v. Brewer*, 255 Ark. 813, 502 S.W.2d 643 (1973). In *Brewer*, the Court held that the amount of holiday pay to which firefighters are entitled should be based upon an eight-hour day, rather than a twenty-four hour shift, and it construed the fifteen days of annual vacation provided to firefighters in Ark. Code Ann. § 14-53-107 to mean fifteen eight-hour days. For purposes of your question, *Donaldson* is most relevant, but it is appropriate to undertake a similar analysis here.

⁵ See Act 1828 of 2005.

⁶ *Id.* (amending Ark. Code Ann. § 14-53-108(a)(1)(B)).

legislature intended for law enforcement officers working longer shifts to be able to accrue and use sick leave days that consisted of more than eight hours, it easily could have done so.⁷ But because the legislature has not amended section 14-52-107, a court would likely apply *Donaldson* and construe a “working day” to mean eight hours for purposes of computing law enforcement sick leave.

In response to your follow-up question whether municipalities can choose to calculate the accrual of “working days” under section 14-52-107 based on 10- or 12-hour periods, I believe the answer is “no.” The “[h]ours and vacations, holidays, and other fringe benefits of [municipal] employees” are “state affairs and subject to the general laws of the State of Arkansas”⁸ A municipality may only legislate upon such state affairs if the municipal ordinance does not conflict with state law.⁹ The legislature has provided that law enforcement officers “shall accumulate sick leave at the rate of twenty (20) working days per year”¹⁰ and that such “sick leave shall accumulate to a maximum of sixty (60) days unless the city or town, by ordinance, authorizes the accumulation of a greater amount, in no event to exceed a maximum accumulation of ninety (90) days”¹¹ Because the Arkansas Supreme Court has interpreted the term “working days” in similar statutes to refer to an eight-hour period, it is likely that a court would construe section 14-52-107’s use of the term to refer to an eight-hour period as well. Thus, a municipal ordinance that defined a “working day” as a 10- or 12-hour period for purposes of section 14-52-107 would be contrary to state law.

Question 2: May police officers be permitted to retain the accrued hours of sick leave previously credited in excess of the statutorily permitted maximum in Ark. Code Ann. § 14-52-107 after the municipal code has been changed to comply with the statute?

⁷ In 2011, a bill was introduced that would have provided a similar definition of “working day” for law enforcement officers, but it did not pass. See Senate Bill 776 of the 88th General Assembly.

⁸ Ark. Code Ann. § 14-43-601(a)(1)(G) (Repl. 2013).

⁹ *Id.* at § 14-43-601(a)(2)(B). See also Ark. Const. art. 12, § 4 (“No municipal corporation shall be authorized to pass any law contrary to the general laws of the state . . .”).

¹⁰ Ark. Code Ann. § 14-52-107(a)(1).

¹¹ *Id.* at § 14-52-107(a)(2).

As noted above, cities may not pass ordinances that conflict with state law. Such ordinances are invalid.¹²

If a court were to determine that section 14-52-107's use of the term "working day" refers to an eight-hour period, an ordinance defining the term differently would be contrary to state law. Therefore, it is unlikely that an officer would be able to retain sick leave accrued under that ordinance in excess of the statutorily permitted maximum.¹³ But how this interpretation of the statute would affect any particular officer's accrued hours under any particular ordinance is ultimately a question of fact that is outside the scope of this opinion.¹⁴

Question 3: Pursuant to Ark. Code Ann. § 14-52-107(c), which governs the minimum and maximum amount of sick leave that may be paid out to a municipal law enforcement officer upon retirement or death, would a municipality be permitted to pay out 60-90 "working days" (either eight or twelve hour shifts) of sick leave pay at death or retirement if that exceeds the amount of pay the employee would normally be paid for a 90-calendar-day period (assuming that the municipality had adopted a period of more than sixty (60) days of salary by ordinance)?

The subsection in question states in pertinent part:

(c) If, at the end of his or her term of service, upon retirement or death, whichever occurs first, any police officer has unused accumulated sick leave, he or she shall be paid for this sick leave at the regular rate of pay in effect at the time of retirement or death. Payment for unused sick leave in the case of a policeman or officer, upon retirement or death, shall not exceed sixty (60) days' salary unless the city, by ordinance, authorizes a greater amount, but in no event to exceed ninety (90) days' salary.

¹² See *City of Ft. Smith v. O.K. Foods, Inc.*, 293 Ark. 379, 738 S.W.2d 96 (1987).

¹³ Cf. *Burke v. Elmore*, 341 Ark. 129, 14 S.W.3d 872 (2000) (holding that health insurance benefit payments made pursuant to an unlawful ordinance were illegal and had to be repaid, despite the recipient's good faith); *Massongill v. County of Scott*, 337 Ark. 281, 991 S.W.2d 105 (1999) (finding that a local ordinance authorizing health insurance benefits for quorum court member in contravention of state law was illegal and requiring reimbursement of those payments).

¹⁴ See Op. Att'y Gen. 2019-029 (noting that this office has a long-standing policy of declining to make factual determinations in the context of rendering official opinions).

The first rule in considering the meaning and effect of a statute is to construe its text just as it reads, giving the words their ordinary and accepted meaning in common language.¹⁵ The courts will construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible.¹⁶ When the language of the statute is plain and unambiguous, there is no need to resort to the rules of statutory interpretation.¹⁷

When these principles are applied, it first bears noting that subsection 14-52-107(c) does not use either the phrase “working days” or “calendar days.” However, its use of the word “salary” arguably suggests that the proper interpretation is “calendar days.” Although not statutorily defined here, the Arkansas Supreme Court has defined salary as “payment at regular intervals or fixed compensation regularly paid, as by the year, quarter, month or week.”¹⁸ And the dictionary definition of “salary” is “[f]ixed compensation for services, paid to a person on a regular basis.”¹⁹ Thus, the plain meaning of “ninety days’ salary” would seem to be the fixed amount of pay that an officer would regularly receive over the course of 90 calendar days, or roughly three months.

An examination of the companion statute for firefighter sick leave, Ark. Code Ann. § 14-53-108, appears to support this interpretation of “90-days’ salary.” Prior to 2005, that statute read as follows:²⁰

¹⁵ See, e.g., *MacSteel Div. of Quanex v. Ark. Okla. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005).

¹⁶ *Bedell v. Williams*, 2012 Ark. 75, 386 S.W.3d 493 (citing *Rylwell, L.L.C. v. Arkansas Dev. Fin. Auth.*, 372 Ark. 32, 269 S.W.3d 797 (2007)).

¹⁷ *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179.

¹⁸ *Hestand v. Erke*, 227 Ark. 309, 311, 298 S.W.2d 44, 46 (1957) (internal citation omitted).

¹⁹ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1546 (2011).

²⁰ Act 1828 of 2005 amended Ark. Code Ann. § 14-53-108(a)(2) to replace days of sick leave with hours, such that “sixty (60) days” was replaced with “one thousand four hundred forty (1440) hours” and “ninety (90) days” was replaced with “two thousand one hundred sixty (2160) hours.” Although 1,440 hours equates to 60 24-hour working days, and 2,160 hours equates to 90 24-hour working days, this current version of the statute is not as helpful in ascertaining the meaning of 60-days’ salary or 90-days’ salary, due to the revised definition of “working day” (“working day” now means “that period of time a firefighter is on duty within a twenty-four hour period.” Act 1828 of 2005 at § 1 (amending Ark. Code Ann. § 14-53-108(a)(1)(B)). See *supra* nn.5-6.

If unused, sick leave shall accumulate to a maximum of sixty (60) days unless the city, by ordinance, authorizes the accumulation of a greater amount, in no event to exceed a maximum accumulation of ninety (90) days, except for the purpose of computing years of service for retirement purposes.

* * *

Payment for unused sick leave in the case of a fire fighter, upon retirement or death, shall not exceed three months' salary unless the city, by ordinance, authorizes a greater amount, but in no event to exceed four and one-half (4 ½) months' salary.²¹

These subdivisions of the statute make clear that the General Assembly intended "three months' salary" and "four and one-half months' salary" to be interpreted as the fixed pay that a firefighter regularly earns over the course of approximately 90 calendar days and 135 calendar days, respectively. It would not make sense to interpret them to mean the pay that a firefighter earns over approximately 90 working days and 135 working days, respectively, as subdivision 14-53-108(a)(2) limits sick leave accumulation to 60 working days, or up to 90 working days, if authorized by ordinance. In other words, a firefighter would never be able to accumulate more than 90 working days of sick leave, so there would be no reason to limit the payout for sick leave to 135 working days of pay. Those limitations only make sense if using calendar days.

There is an argument to be made that sections 14-52-107 and 14-53-108 require calculating their sick leave payout caps differently, due to one statute's use of days and the other's use of months.²² But the statutes' legislative history indicates that this was probably not the General Assembly's intent.²³ Nevertheless, the statute is

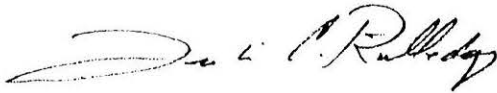
²¹ Ark. Code Ann. § 14-53-108(a)(2), (c)(2) (Repl. 1998).

²² One could argue, for example, that in using the phrase "three months' salary," the legislature meant a period of time equal to roughly 90 calendar days, rather than 90 working days, because rarely if ever does anyone refer to a month's worth of working days. On the other hand, "90 days' salary" could reasonably be interpreted to mean 90 working days. Thus, two seemingly equivalent phrases could have entirely different meanings.

²³ Payout for law enforcement sick leave was originally capped at an amount equivalent to two months' salary, unless the city, by ordinance, authorized a great amount, but in no event to exceed three months' salary. See Act 842 of 1983, § 3 (amending Ark. Stat. Ann. 19-1720). That statute

sufficiently ambiguous that it is difficult to reach a definitive conclusion. While I believe a reviewing court would probably find that a municipality may not pay out sick leave at death or retirement in an amount that exceeds the pay the employee would normally receive during a 90-calendar-day period, the statute is not entirely clear. Legislative clarification is warranted.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Rutledge".

LESLIE RUTLEDGE
Attorney General

was later amended to place the payout cap at an amount equivalent to 60 days' salary, unless the city, by ordinance, authorized a greater amount, but in no event to exceed 90 days' salary. *See* Act 181 of 1985, § 3. Following the reasoning set forth in n.22, this would amount to a substantive change, such that the two months' salary payout cap would have been increased to an amount closer to three months' salary, and the three months' salary payout cap would have been increased to an amount closer to four and one-half months' salary. I think it much more likely that Act 181 simply meant to convert months to days.