

Opinion No. 2012-078

July 25, 2012

The Honorable Mike Fletcher
State Senator
313 Meadowlark Trail
Hot Springs, Arkansas 71913

Dear Senator Fletcher:

You have asked for my opinion about A.C.A. § 14-52-106, which deals with annual vacation for police officers. I have paraphrased your question as follows:

State law ensures that all municipal police officers are allowed at least 15 “working days” of annual vacation with full pay. Police officers in Sheridan normally work a 40-hour week, but they do so in different ways. Some work four 10-hour shifts per week. Others work five 8-hour shifts. Does state law require that those working 10-hour shifts be granted annual vacation at a different rate than those working the 8-hour shift?

RESPONSE

The answer to this question is, in my opinion, “no.” As explained more fully below, the length of an officer’s shift does not affect the number of vacation days he or she must be granted per year pursuant to section 14-52-106.

Section 14-52-106 requires certain police officers be awarded a certain amount of annual vacation: “The head or chief of each police department shall arrange that each employee shall be granted an annual vacation of not less than fifteen (15) working days with full pay.” But the statute never defines what is meant by “working days.”

While no appellate court has construed this statute, the Arkansas Supreme Court has construed the nearly identical statute governing annual leave for firefighters. The statute requires “[t]he chief of the fire department” to “so arrange that each employee shall be granted an annual vacation of not less than fifteen (15) days with full pay.”¹ In *City of Fort Smith v. Brewer*,² the Court was asked about the meaning of the term “working days” in a statute where the term was undefined. Specifically, the question was whether the term refers to a “tour of duty” or “an 8-hour period.” The former refers to the length of the shift that the employee actually worked. For example, using your background facts, some officers have a 10-hour shift, others have an 8-hour shift. The Court clearly held that in the absence of a statutory definition of “working day,” the term should be interpreted according to its standard meaning, which is an 8-hour period.³

While the *Brewer* case was not specifically about section 14-52-106, a court would, in my opinion, probably conclude that *Brewer* controls the interpretation of section 14-52-106, for two reasons. First, the Court construed the nearly identical language as it applies to firefighters. Second, the Court’s rationale applies equally to this statute; namely, when “working days” is undefined, courts should give the term its ordinary meaning of “an 8-hour period.”⁴

Therefore, in my opinion, when section 14-52-106 declares that certain officers should be awarded 15 “working days” of annual vacation per year, the statute means that these officers must receive the equivalent of 15 “8-hour periods” of vacation, which amounts to 120 hours of leave per year. Accordingly, the answer to your question is: “No, the length of an officer’s shift does not affect the number of vacation days he or she must be granted per year.”⁵

¹ A.C.A. § 14-53-107 (Repl. 1998). The court addressed this statute as evidence to support its reading of another statute. The latter was directly under review by the Court.

² 255 Ark. 813, 502 S.W.2d 643 (1973).

³ 255 Ark. at 819–21, 502 S.W.2d 646–47.

⁴ See the many opinions from this office applying the same rationale to other statutes with an undefined use of “working days”: Op. Att’y Gen. Nos. 2006-135, 93-013, 92-186, 91-233.

⁵ This opinion does not address the minimum increments in which officers may *use* the vacation they have been granted.

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Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

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