



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-067

November 2, 2016

Dr. Robin E. Bowen  
Office of the President  
Arkansas Tech University  
1509 N. Boulder Ave., Suite 210  
Russellville, AR 72801

Dear Dr. Bowen:

This is in response to your request for my opinion on several questions concerning the payment of accumulated, unused sick leave to certain employees of Arkansas Tech University.

As you have noted in the background information submitted with your questions, Arkansas Valley Technical Institute ("Valley Tech") was merged into Arkansas Tech University ("Arkansas Tech") by Act 452 of 2003, which included a provision stating that "[e]mployees of [Valley Tech] as of June 30, 2003 who are eligible for payment of accrued sick leave upon retirement or death under Arkansas Code § 21-4-501 shall retain that benefit."<sup>1</sup> You have also recited some of the legislative history of the subchapter of the Arkansas Code governing compensation for state agency employees' unused sick leave. You have pointed out that a state-supported institution has the discretion to compensate non-classified employees for accumulated sick leave; and you have stated that currently, Arkansas Tech does not provide such compensation.

Against this background, you ask:

1. When Act 452 of 2003 was enacted, were the individuals employed as of June 30, 2003 at Arkansas Valley Technical

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<sup>1</sup> Acts 2003, No. 452, § 3.

Institute, whether classified or non-classified, eligible for compensation for unused sick leave upon the employee's retirement or death under Ark. Code Ann. § 21-4-501?

2. If the answer to question #1 is "no", are current Arkansas Tech University employees, who were employees of Arkansas Valley Technical Institute on June 30, 2003, whether classified or unclassified, eligible upon retirement or death for compensation for unused sick leave under Subchapter 5 – Financial Incentives to Decrease Use of Sick Leave – as it exists today?
3. If the answer to question #1 is "yes", [then] with regard to unclassified employees only, is it permissible for Arkansas Tech University to compensate upon retirement or death only those individuals who were unclassified employees of Arkansas Valley Technical Institute on June 30, 2003, but not other non-classified employees of Arkansas Tech University?

## **RESPONSE**

Valley Tech was merged into Arkansas Tech on July 1, 2003.<sup>2</sup> I take your first question to be asking whether Ark. Code Ann. § 21-4-501 applied to Valley Tech employees at the time of the merger. The answer to that question is "no" because at that time, section 21-4-501 did not apply to any employees of state-supported institutions of higher education. In my opinion, however, the inapplicability of section 21-4-501 on July 1, 2003, to employees of higher education is not relevant to what appears to be your main concern. I take it from your remaining questions that you are mainly concerned about what happens in the future when current employees of Arkansas Tech who were employees of Valley Tech as of June 30, 2003, retire or die. In this regard, and in response to your second question, it is my opinion that the unused sick leave compensation requirement of section 21-4-501 applies to classified employees of Arkansas Tech—including those who were employees of Valley Tech on June 30, 2003. But in my opinion, the eligibility of non-classified Arkansas Tech employees who were employees of Valley Tech as of June 30, 2003, for this compensation depends upon the existence of agreements prior to the July 1, 2003 merger to pay Valley Tech employees the accrued sick leave benefits provided under section 21-4-501. It is my opinion in response to your third question that Arkansas Tech has discretion to decide whether to provide

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<sup>2</sup> Ark. Code Ann. § 6-57-101(a) (Repl. 2013).

the unused sick leave compensation under 21-4-501 to non-classified employees of Arkansas Tech who were not employees of Valley Tech on June 30, 2003.

## DISCUSSION

***Question 1: When Act 452 of 2003 was enacted, were the individuals employed as of June 30, 2003 at Arkansas Valley Technical Institute, whether classified or non-classified, eligible for compensation for unused sick leave upon the employee's retirement or death under Ark. Code Ann. § 21-4-501?***

Section 21-4-501 requires that accumulated, unused sick leave be paid “upon retirement or death” to “any employee or beneficiary of any employee of any agency of the State of Arkansas” based on a sliding scale depending on the number of sick leave days accumulated.<sup>3</sup> This provision did not apply to any

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<sup>3</sup> Ark. Code Ann. § 21-4-501(a) (Repl. 2004). The statute provides in full as follows:

(a) Upon retirement or death, any employee or beneficiary of any employee of any agency of the State of Arkansas shall receive compensation for accumulated unused sick leave as follows:

(1) If the employee has accumulated at least fifty (50) days but fewer than sixty (60) days of sick leave, the employee shall receive an amount equal to fifty percent (50%) of the number of accrued sick leave days rounded to the nearest day multiplied by fifty percent (50%) of the employee's daily salary;

(2) If the employee has accumulated at least sixty (60) days but fewer than seventy (70) days of sick leave, the employee shall receive an amount equal to sixty percent (60%) of the number of accrued sick leave days rounded to the nearest day multiplied by sixty percent (60%) of the employee's daily salary;

(3) If the employee has accumulated at least seventy (70) days but fewer than eighty (80) days of sick leave, the employee shall receive an amount equal to seventy percent (70%) of the number of accrued sick days rounded to the nearest day multiplied by seventy percent (70%) of the employee's daily salary; and

(4) If the employee has accumulated at least eighty (80) or more days of sick leave, the employee shall receive an amount equal to eighty percent (80%) of the number of accrued sick leave days rounded to the nearest day multiplied by eighty percent (80%) of the employee's daily salary.

(b) For purposes of this section, the employee's daily salary shall be determined by dividing the annual salary by two hundred sixty (260).

(c) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall promulgate regulations necessary to implement this subchapter.

(d) In no event shall an employee or beneficiary of an employee receive an amount that exceeds seven thousand five hundred dollars (\$7,500) upon retirement or death due to the provisions of this section.

employees of state-supported institutions of higher education on July 1, 2003, when Valley Tech was merged into Arkansas Tech pursuant to Act 452 of 2003. Section 21-4-501 was enacted under Act 1127 of 1999, and that act excluded “state-supported institutions of higher learning” from its provisions.<sup>4</sup>

The answer to your first question is therefore “no.” In my opinion, however, the inapplicability of section 21-4-501 on July 1, 2003, to employees of higher education is not relevant to what appears to be your main concern. I take it from your remaining questions that you are concerned about what happens in the future when current employees of Arkansas Tech who were employees of Valley Tech as of June 30, 2003, retire or die. This will be addressed in response to your next two questions.

***Question 2: If the answer to question #1 is “no”, are current Arkansas Tech University employees, who were employees of Arkansas Valley Technical Institute on June 30, 2003, whether classified or unclassified, eligible upon retirement or death for compensation for unused sick leave under Subchapter 5 – Financial Incentives to Decrease Use of Sick Leave – as it exists today?***

In my opinion, there is no direct correlation between the response to your first question and this question. The subchapter you have referenced—Ark. Code Ann. §§ 21-4-501 through 505—addresses compensation for accumulated, unused sick leave for state agency employees. As noted above, section 21-4-501 requires that accumulated, unused sick leave be paid “upon retirement or death” to “any employee or beneficiary of any employee of any agency of the State of Arkansas” based on a sliding scale depending on the number of sick leave days accumulated.<sup>5</sup> Although section 21-4-501 refers to “any employee” of a state agency, the application of section 21-4-501 is governed by Ark. Code Ann. § 21-4-503, which states in relevant part:

(a) The provisions of §§ 21-4-501 and 21-4-504<sup>6</sup> apply to:

(1) Employees of the Arkansas State Game and Fish Commission;

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<sup>4</sup> Acts 1999, No. 1127, § 3.

<sup>5</sup> *Supra*, note 3.

<sup>6</sup> Section 21-4-504 encourages state agencies to participate in DF&A’s state leave accounting system. Ark. Code Ann. § 21-4-504 (Repl. 2004).

- (2) Employees of the Arkansas State Highway and Transportation Department;
  - (3) Classified employees of state-supported institutions of higher education; and
  - (4) Employees of all agencies of this state whether in the executive, legislative, or judicial branch of government.
- (b) The provisions of this section or any amendments to this section shall not change any employee benefits or agreements established under § 6-57-103, § 6-58-105, or § 6-59-105.<sup>7</sup>

Section 21-4-501's unused sick leave compensation requirement thus plainly applies to “[c]lassified employees of state-supported institutions of higher education,” pursuant to subsection 21-4-503(a)(3).<sup>8</sup> This would include classified employees of Arkansas Tech who were employees of Valley Tech on June 30, 2003.

It is therefore my opinion in response to your second question that classified Arkansas Tech employees who were employees of Valley Tech on June 30, 2003, are eligible upon retirement or death for the unused sick leave compensation under section 21-4-501.

With regard, however, to *non-classified* employees of state-supported higher education institutions, the institutions generally have discretion—pursuant to Ark. Code Ann. § 21-4-505—to decide whether to provide the compensation for unused sick leave that must be provided to classified employees under section 21-4-501.<sup>9</sup> Thus, based solely on the provisions of sections 21-4-501 through 505, non-classified employees of Arkansas Tech who were employees of Valley Tech on

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<sup>7</sup> Ark. Code Ann. § 21-4-503 (Supp. 2015).

<sup>8</sup> Emphasis added.

<sup>9</sup> Ark. Code Ann. § 21-4-505(a) (Supp. 2015) (“At its discretion, a state-supported institution of higher education may compensate a nonclassified employee of the state-supported institution of higher education for accumulated unused sick leave by providing to the nonclassified employee the same compensation for accumulated unused sick leave provided to a classified employee of the state-supported institution of higher education under § 21-4-501.”).

June 30, 2003, are not eligible for the unused sick leave compensation under section 21-4-501 unless Arkansas Tech decides to provide such compensation.

But consideration must also be given to Ark. Code Ann. § 6-57-103 when dealing specifically with non-classified employees of Arkansas Tech who were employees of Valley Tech on June 30, 2003. According to subsection 21-4-503(b), “any employee benefits or agreements established under § 6-57-103, § 6-58-105, or § 6-59-105” are unchanged by section 21-4-503. Subsection 21-4-503(b) thus plainly contemplates that some “benefits or agreements” might be established in connection with accrued sick leave compensation under the referenced statutes. The rules of statutory construction require that this language be considered together with the referenced statutes in order to identify those “benefits or agreements.”<sup>10</sup>

Arkansas Code Annotated § 6-57-103 is part of the body of the law governing the July 1, 2003 merger of Valley Tech with Arkansas Tech.<sup>11</sup> It provides in relevant part as follows regarding the “payment of accrued sick leave” for “[e]mployees of Arkansas Valley Technical Institute as of June 30, 2003”:

(a)(1) Employees of Arkansas Valley Technical Institute as of June 30, 2003, who are eligible for payment of accrued sick leave upon retirement or death under § 21-4-501 shall retain that benefit.

(2) This benefit shall be paid upon the employee’s retirement or death from the funds restricted to expenditures in support of Arkansas Valley Technical Institute.

(3) Individuals employed after June 30, 2003, shall not be entitled to receive compensation under § 21-4-501.<sup>12</sup>

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<sup>10</sup> The rule of construction known as *in pari materia* requires that statutes that are of the same subject matter be read together and in a harmonious manner. *E.g. Central Okla. Pipeline, Inc. v. Hawk Field Svcs., LLC*, 2012 Ark. 157, 400 S.W.3d 701; *Mays v. Cole*, 374 Ark. 532, 289 S.W.3d 1 (2008).

<sup>11</sup> Effective that date, all property, records, obligations, personnel, and legal authority were transferred from Valley Tech to Arkansas Tech (*id.* at § 6-57-102), and the Arkansas Valley Technical Institute campus became known as Arkansas Valley Technical Institute of Arkansas Tech University. *Id.* at § 6-57-101(c). The name was subsequently changed to “Arkansas Tech University—Ozark Campus,” effective July 1, 2007. *Id.* at § 6-57-101(d).

<sup>12</sup> Ark. Code Ann. § 6-57-103 (Repl. 2013).

Section 6-57-103 thus distinguishes between “[e]mployees of Arkansas Valley Technical Institute as of June 30, 2003” and “[i]ndividuals employed after June 30, 2003.” The latter presumably refers to those first employed at the Valley Tech campus after the merger. The statute does not actually establish any benefits, but instead contemplates the existence of benefits which Valley Tech employees as of June 30, 2003 will “retain.” With regard, specifically, to sick leave compensation, it contemplates some of these employees being “eligible for payment ... under § 21-4-501....”

When section 21-4-503(b) is read together with section 6-57-103, it becomes clear that these statutes contemplate the possible existence of agreements prior to the July 1, 2003 merger of Valley Tech with Arkansas Tech to pay Valley Tech employees the accrued sick leave benefits provided under section 21-4-501. Under this reading, eligibility for the payment does not arise directly under section 21-4-501, but instead depends upon the existence of any such agreements.

This reading is reinforced, in my opinion, by a review of the other statutes referenced in section 21-4-503(b): “§ 6-58-105 [and] §6-59-105.” These statutes address sick leave compensation for employees of National Park Community College and Arkansas Northeastern College, respectively.<sup>13</sup> The language regarding payment for sick leave is identical for both institutions:

The employees of [NPC and ANC] shall be entitled to lump sum payment for unused sick leave *under a program similar to that authorized by §§ 21-4-501 and 21-4-502.*<sup>14</sup>

When section 21-4-503(b)’s reference to “employee benefits or agreements established under § 6-57-103, § 6-58-105, or § 6-59-105” is considered in light of the above language, it is apparent that the “employee benefits” are the lump sum

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<sup>13</sup> These institutions are also the product of a merger of several higher education technical institutions. Effective July 1, 2003, Garland County Community College was renamed “National Park Community College” (NPC) and Quapaw Technical Institute was merged into NPC. Ark. Code Ann. § 6-58-102 (Repl. 2013). Also effective July 1, 2003, Cotton Boll Technical Institute was merged into Mississippi County Community College and the latter was renamed “Arkansas Northeastern College.” Ark. Code Ann. § 6-59-102 (Repl. 2013).

<sup>14</sup> Ark. Code Ann. §§ 6-58-105 and 6-59-105 (Repl. 2013) (emphasis added). The former section 21-4-502 addressed lump sum sick leave payment for unused sick leave in 2000 and was repealed in 2005. See Acts 2005, No. 1962, § 97.

payments required by sections 6-58-105 and 6-59-105. The "agreements" reference is then properly interpreted to apply to section 6-57-103.

It is therefore my opinion that the answer to your question with regard to non-classified employees depends upon the existence of agreements, prior to the July 1, 2003 merger of Valley Tech with Arkansas Tech, to pay Valley Tech employees the accrued sick leave benefits provided under section 21-4-501. As noted above, state-supported higher education institutions generally have discretion to decide whether to provide non-classified employees the compensation for unused sick leave that must be provided to classified employees under section 21-4-501. But if Valley Tech had an agreement with its non-classified employees on June 30, 2003, to pay for this sick leave compensation, then in my opinion, any current, non-classified Arkansas Tech employees who were employees of Valley Tech on June 30, 2003, are entitled to retain that benefit.

***Question 3: If the answer to question #1 is "yes", [then] with regard to unclassified employees only, is it permissible for Arkansas Tech University to compensate upon retirement or death only those individuals who were unclassified employees of Arkansas Valley Technical Institute on June 30, 2003, but not other non-classified employees of Arkansas Tech University?***

In my opinion, Arkansas Tech has discretion under Ark. Code Ann. § 21-4-505 to decide whether to provide sick leave compensation for non-classified employees of Arkansas Tech who were not employees of Valley Tech on June 30, 2003.

Sincerely,



LESLIE RUTLEDGE  
Attorney General

cc: Thomas W. Pennington, University Counsel