

OPINION
54-15

June 4, 1954 (OPINION)

CITIES

RE: Employees Entitled to Pay - National Guard Encampment

This is in reply to your letter of May 28, 1954, in regard to section 37-0125 of the 1953 Supplement to the N.D.R.C. of 1943 and section 37-0101 of the N.D.R.C. of 1943 in connection with leaves of absence for employees of this state and its political subdivisions for the purpose of attending National Guard Encampments for training purposes.

It appears that you have construed these statutes to require continued payment of wages or salary to municipal employees with ninety days of service during the two weeks annual National Guard encampment. However, you ask question: "When an employee has had a total of thirty days leave with pay for National Guard encampments, whether such total of thirty days occurred in one, two, or more years, is he entitled to his pay during further leaves for such purposes or may we discontinue his pay when he has reached the total of thirty days.?"

In going into the legislative history of these statutes we note in chapter 213, section 9 of the 1935 Session Laws, that the Legislature made provision for leaves of absence for officers and employees of this state, its political subdivisions and its municipalities who were members of the National Guard when ordered to "active service," without loss of pay during the first thirty days of such leave of absence. Section 1 of that chapter, included in the definition of "active service," service on behalf of the state at encampments whether ordered by state or federal authority, except when called or drafted into the federal service by the President of the United States.

While we have not found any judicial construction of these provisions by the courts of this state, it would appear that the purpose of such an enactment would be to protect employees of the state and its subdivisions from loss of status or efficiency ratings or pay by reason of their patriotically taking part in the preparedness program inaugurated by this state and the Federal Government through the organization of the National Guard. Under the system of training in the National Guard, at that time, as at the present time, it was customary, and I assume such custom was known to the Legislature, that an annual active training period of fourteen days be undertaken at a military encampment. In including in the definition of active service, service at encampments, it would appear that the legislative purpose was to provide such protection for training as well as the emergency duties the National Guard on occasion undertakes.

There appears little if any ambiguity in the provision that the leave of absence thereunder granted be without loss of pay during the first thirty days of such leave of absence, at least in this 1935

enactment. Also, it would seem rather illogical to contend that in spite of the words the Legislature used at this time, and the apparent general purposes of this statute to provide such protections for only one, two, or three such encampments, and then withdraw such protection from future encampments. The obvious purpose of such a limitation at this time would be to prevent abuse of the protection from loss of pay by those who should undertake full-time National Guard employments, or those who volunteered for the longer encampments, such as those that on occasion have been held at out of state camps.

Later re-enactments of this statute, particularly during the years of World War II have greatly expanded its original scope, providing a similar protection to that originally given to National Guardsmen, to members of certain other reserve organizations, those volunteering or inducted into the Regular Army or Army of the United States, and expanding rather than limiting the protection originally given National Guardsmen.

In view of the history and background of section 37-0125 of the 1953 Supplement to the N.D.R.C. of 1943 and the plain and unambiguous terms in which the provision that the leave of absence thereunder granted shall be "without loss of pay during the first thirty days" thereof is couched, it is our opinion that the proper construction of this statute is that when an employee who has been in the continuous employ of a political subdivision of this state for ninety days immediately preceding being ordered to active non-civilian employment is so ordered to a National Guard annual encampment, such as that referred to in your letter, he is entitled to a leave of absence from his employment by such political subdivision, without loss of pay during the first thirty days of such leave of absence, without regard to previous leaves granted for previous annual encampments.

LESLIE R. BURGUM

Attorney General