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OPINION	:	No. 79-1013
	:	
of	:	<u>January 11, 1980</u>
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SUBJECT: TRANSFER OF TIME FROM STATE TO COUNTY EMPLOYMENT—State employees separated from service under Government Code section 18005(a), to become employed by a county, may not elect to transfer unused vacation and overtime credit from their state to county employment.

The Honorable David E. Pesonen, Director of the Department of Forestry, has requested an opinion on a question we have rephrased as follows:

May state employees separated from service under Government Code section 18005, subdivision (a), to become employed by a county, elect to transfer unused vacation and overtime credit from their state to county employment?

CONCLUSION

State employees separated from service under Government Code section 18005, subdivision (a), to become employed by a county, may not elect to transfer unused vacation and overtime credit from their state to county employment.

ANALYSIS

We are informed that the Department of Forestry has provided fire protection services to the County of Orange under contractual agreements since 1931. Extension of the contracts will terminate as of June 30, 1980, with the county assuming responsibility for the services thereafter. Numerous state forestry employees may become Orange County employees at that time.

The question presented for analysis is whether these employees may transfer their unused vacation and overtime credit from their state to county employment. We conclude that they may not.

Government Code section 18005, subdivision (a),¹ is the controlling statute and provides as follows:

“Upon separation from service without fault on his part, a person is entitled to a lump sum payment as of the time of separation for any unused or accumulated vacation or for any time off to which he is entitled by reason of previous overtime work where compensating time off for overtime work is provided for by the appointing power or by rules of the State Personnel Board. Such sum shall be computed by projecting the accumulated time on a calendar basis so that the lump sum will equal the amount which the employee would have been paid had he taken the time off but not separated from the service.”

Under the statute, accumulated vacation and overtime credit are recognized as part of the compensation paid to an employee and to which the employee is entitled—in the form of a lump sum payment—upon separation from service. (See *Bonn v. California State University, Chico* (1979) 88 Cal. App. 3d 985, 990–992.)

Section 18005, subdivision (a), provides only for the payment of a lump sum amount and does not indicate that the accumulated vacation and overtime credit may be transferred when an employee leaves state service.² We have found no statute that authorizes such a transfer of accumulated vacation and overtime credit.

It is understandable that the Legislature may not wish to require a county to accept the transfer of vacation and overtime credit of employees who have earned such credit

¹ All unidentified statutory references hereinafter are to the Government Code.

² The rules are different where the employee transfers from one state agency to another. (See § 18005, subd. (c).)

while being employed previously by the state. Normally, the amount of compensation paid to county employees is a matter for the county board of supervisors to decide. (See Cal. Const. art. XI, § 1, subd. (b); art. IX, § 4, subd. (f); §§ 23003, 25207; *San Joaquin County Employee Assn., Inc. v. County of San Joaquin* (1974) 39 Cal. App. 3d 83, 88–90.)

We thus conclude that state employees separated from service under section 18005, subdivision (a), to become county employees may not elect to transfer unused vacation and overtime credit from their state to county employment.

Under certain conditions, however, it may be possible for the county and the incoming employees to arrange for substantially the same result. For example, a leave of absence without pay could place an employee in virtually the same position as if he had not received the lump sum payment and had transferred the unused credit. An examination of the county's charter, ordinances and/or memorandum of understanding with its employees would be necessary to determine whether such an alternative arrangement could be made.
