



# Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

February 18, 1987

Major General Donald L. Owens  
The Adjutant General  
5636 E. McDowell Road  
Phoenix, Arizona 85008

I87-031 (R86-170)

Dear General Owens:

You have asked for a clarification of Ariz. Atty. Gen. Op. I80-177, interpreting A.R.S. § 26-168(C) regarding when an employee is to be charged with military leave. Specifically, you ask whether military leave is to be charged for days on which the employee was not otherwise scheduled for work. Secondly, you ask whether an employee must be paid for those days for which he is charged military leave but was not scheduled to work.

We conclude that an employee should be charged military leave for all consecutive days for which he is on military orders whether they are work or non-work days, and that an employee is entitled to pay only for those days for which he would have been scheduled and paid for work if he had not been on military leave.

I80-177 dealt with the interaction between A.R.S. § 26-168(C) and the then-effective personnel rule on military leave A.C.R.R. R2-5-51. The relevant portion of A.R.S. § 26-168(C) provides:

An officer or employee of the state, or any department or political subdivision thereof, who is a member of the national guard shall be entitled to leave of absence from his duties without loss of time or efficiency rating on all days during which he is engaged in field training as provided by this chapter and for a period

Major General Donald L. Owens  
February 18, 1987  
I87-031  
Page 2

during leave of absence not to exceed thirty calendar days in any two consecutive calendar years he shall be entitled to his pay.

In Ariz. Atty. Gen. Op. I80-177 we concluded that when A.R.S. § 26-168(C) was read in conjunction with A.C.R.R. R2-5-51, an employee was to be considered on military leave for all calendar days while on military orders, regardless of the employee's work schedule. That conclusion still stands.

Personnel Board Rule A.C.R.R. R2-5-51 has been amended since I80-177 was issued. The Personnel Rule on military leave now reads:

A.A.C. R2-5-407. Military Leave

An employee who requests absence with pay on military leave pursuant to A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave.<sup>1/</sup>

The rules of statutory construction require that a statute be interpreted so as to be consistent with its intent and purpose. State v. Schoner, 121 Ariz. 528, 530, 591 P.2d 1305, 1307 (App. 1979). Statutory language is to be given its usual meaning, unless it appears otherwise from the context. Skyview Cooling Co. v. Industrial Commission of Arizona, 142 Ariz. 554, 558, 691 P.2d 320, 324 (App. 1984).

The apparent purpose behind A.R.S. § 26-168(C) is to accommodate state employees' participation in the National Guard, an organization established by art. XVI, Ariz. Const. To that end the statute grants up to 30 calendar days leave to employees every 2 years, while paying the state salary to which they would have been entitled had they not been serving with the National Guard.

There are no Arizona cases interpreting A.R.S. § 26-168. The term "calendar days" may be causing the confusion cited in your letter.

---

<sup>1/</sup>This rule became effective on December 31, 1986.

Major General Donald L. Owens  
February 18, 1987  
I87-031  
Page 3

Statutes should be interpreted so that no word is rendered superfluous or insignificant. State v. Arthur, 125 Ariz. 153, 155, 608 P.2d 90, 92 (App. 1980). The word "calendar" before a word denoting a period of time such as "year" or "day" means that the period of time is to be uninterrupted. For example, "calendar days" refers to a continuous uninterrupted period of days in other contexts. In Bedard v. Gonzales, 120 Ariz. 19, 583 P.2d 906 (1978) the appellant contended that Rule 16(a), Rules of Civil Procedure, which provides for exclusion of Saturdays, Sundays and legal holidays when calculating periods of time of less than seven days, should be applied in calculating a five-day time limit in an election statute. The Arizona Supreme Court held that the Rule of Civil Procedure was not applicable, stating:

[T]he legislature intended the five-day limit for challenging nomination petitions to mean five calendar days.

129 Ariz. 19, 20, 583 P.2d 906, 907 (1978). See also Davis v. Davis, 143 Ariz. 54, 56, 691 P.2d 1082, 1084 (1984) ("Her notice of appeal . . . was filed four calendar days late.") and Moody v. Vans Gila Gin Company, 89 Ariz. 280, 361 P.2d 541 (1961) (twentieth calendar day occurring on a holiday). The legislature has used the term "calendar" to denote an uninterrupted period of time in other statutes. See e.g. A.R.S. § 23-773(b) regarding calendar days to appeal a decision on unemployment benefits. See also A.R.S. § 13-703(A) requiring 25 calendar years to be served in prison before a convicted first-degree murderer is eligible for release. Ariz. Atty. Gen. Op. I86-039. Thus the term "calendar days" in A.R.S. § 26-168(C) refers to consecutive days, including weekends and holidays.

Turning then to your first question, military leave must be calculated as follows: Employees must submit a request in order to utilize their military leave. A.A.C. R2-5-407. A request for military leave must be accompanied by military orders. Id. The calendar days to be charged against military leave are the number of days specified in the military orders, regardless of whether they are the employee's regularly-scheduled work or non-work day.

Regarding your second question, a member of the National Guard claiming military leave "shall be entitled to his

Major General Donald L. Owens  
February 18, 1987  
I87-031  
Page 4

pay." A.R.S. § 26-168(C). Giving those words their plain meaning, the National Guard member is entitled to any salary he or she would earn during the time period specified in his or her military orders. The employee's work schedule is irrelevant. The only inquiry is the number of state-pay days that fall within the time period covered by the military orders.

Sincerely,



BOB CORBIN  
Attorney General

BC:DMR:JAF:clp