

to the following recitals from the attorney general's opinion.

1. "Vacation" is defined as "surcease from regular duty," "relief from duty," "respite," "a period of exemption from work." We see in these definitions a direct reference to an employee's leave of absence from his *work*. We do not see that this has any connection with his employer's work *schedules*.

2. The opinion states "we believe the provision for two calendar week's vacation is consistent with the act in that it will provide at least twelve days annual leave with pay to every employee . . ." This opinion is predicated on the Commission's statement that present rules provide, in effect, for two calendar weeks vacation. We reiterate that neither the present rules nor the act itself even *infer* a two weeks vacation as constituting an annual leave. The act speaks in days and the present and proposed rules likewise. The expressing of any vacation leave in terms of weeks or as an annual leave appears to be presumptive.

3. It is possible that misunderstanding was present when the opinion stated "The phrase in Section 3, of your Rule XVIII, referring to a business day as a working day" was entirely proper and gave rise to no confusion at the time the rule was adopted, for the reason that working days generally for state employees *then* were all business days . . ."

No mention of the term "business day" appears in the Section 3, of the rule cited, and it would seem that the opinion was based, in this respect, on a misunderstanding of the facts. It is also pointed out that at the time the present rules *were* adopted, the great majority of employees were employed $5\frac{1}{2}$ working days—not 6 business days. days.

Section 2, of Rule XVIII, says "leaves of absence shall be computed to the nearest $\frac{1}{2}$ day," and also states "deductions shall not be made for holidays or *non-work days* occurring at the beginning, during or at the end

of a period of leave with pay . . ." This present rule indicates further that working days and business days were not even considered to be synonymous at the time the present rules were adopted. It is doubtful if there was at that time any confusion in the meaning of the term *non-work days*.

4. Continuing, the opinion makes clear that the term "business day" is properly applicable to state departments and institutions as being a day on which they remain open for business; and that *their* working days and business days can thus be construed as being identical. We point out that when used in reference to a *department*, the terms have an entirely different application than when used in reference to an *employee's* leave of absence from his work as granted under law.

It is not supercilious, in attempting *now* to fathom the mind of the legislature, to ponder on their use of the term "26 work days" in establishing the maximum cumulative vacation for the employee. The quantity is not divisible evenly by 5, $5\frac{1}{2}$, 6 or any other number of either work days or business days, except 2, 13 and 26. Can there *now* be an interpretation of the intent in this respect by facts such as this?

The opinion concludes with its construction of Section 18, of the law to mean that *annual* vacation with pay was intended, to be computed at one *business day's* leave earned for each full calendar month of service, subject to the limitation of accumulation of vacation.

Under this construction, the law would, in effect, read as follows:

"Annual vacation with pay shall be granted all regular employees in accordance with rules adopted by the board of two calendar weeks and may be cumulative. No vacations in excess of 26 days, excluding Sundays and holidays shall be granted in any one year."

Comparison with the law as passed by the legislature will disclose inter-