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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

July 10, 2019  
OPINION 19-0081

Mr. David Ditch  
Iberia Parish Clerk of Court  
300 Iberia Street  
New Iberia, LA 70560

10 – CLERKS OF COURT – Compensation & Fees; Powers &  
Duties, General

La. R.S. 23:631

Whether or not the former Clerk of Court is entitled to a pay out of paid time off upon separation depends on whether or not there is a vacation policy allowing the Clerk to accrue vacation leave and, if so, if the Clerk has accrued vacation leave prior to separation.

Dear Mr. Ditch:

As the Clerk of Court of Iberia Parish, you requested an opinion asking whether the former Clerk of Court who resigned was entitled to a pay out of eight days of paid time off ("PTO").

Louisiana Revised Statute 23:631(D) addresses the payment of accrued vacation time to an employee who resigns. It provides that "vacation pay will be considered an amount then due [upon resignation] only if, in accordance with the stated vacation policy of the [employer]," two conditions are met.<sup>1</sup> The two conditions are that 1) the employee is eligible for and has accrued the right to take the vacation time with pay, and 2) the employee has not been compensated for the vacation time at the time employment ends.<sup>2</sup>

Thus, the first consideration is whether the policy provides for the payment of vacation time to the Clerk of Court. To assist in responding to this question, you provided the Employee Manual for the Iberia Parish Clerk of Court Office. The Manual provides for "Leaves from Employment" and "Paid Time Off." Employees who are eligible for paid time off are defined as "full-time staff members." The policy provides that paid time off does not roll over or accrue from year to year and, in order to take leave, the employee must submit a "Leave Request Form." You also provided that the Employee Manual does not apply to the Clerk of Court, but only to employees. You stated that the Clerk of Court does not submit leave requests or accrue any sort of leave. In sum, the Employee Manual applies to the staff or employees of the Clerk of Court, but not to the Clerk of Court. The Manual itself supports this contention. The Manual contains a letter addressed to new employees of the office and signed by the former Clerk of Court. The Manual begins with information about a probationary period for new employees and addresses the individual reading the Manual directly by stating *inter alia* "[y]ou were employed by this office...." Considering that the Clerk of Court is an elected official and not subject to a probationary or trial period of employment, it is likely that the Manual

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<sup>1</sup> La. R.S. 23:631(D)(1).

<sup>2</sup> *Id.*

does not apply to the Clerk of Court.<sup>3</sup> As such, it appears that there is no vacation policy for the Clerk of Court.

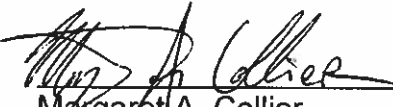
If there is no policy providing vacation pay for the Clerk of Court, La. R.S. 23:631(D) does not apply. If La. R.S. 23:631(D) does not apply, it is the opinion of this office that the former Clerk of Court is not entitled to a payout of PTO. Of course, if the Clerk of Court's Office has a policy addressing the issue of vacation leave for the Clerk of Court, the statute may apply if the remaining two conditions are met. Likewise, if, in practice, the Clerk of Court accrued vacation leave from year to year and took leave when he was absent from the office during normal working hours, then the Clerk of Court may be entitled to a payout of remaining PTO.

We trust this adequately responds to your request. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY  
ATTORNEY GENERAL

By:

  
Margaret A. Collier  
Assistant Attorney General

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<sup>3</sup> La. R.S. 13:759.