



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

November 18, 1976

The Honorable W. J. Estelle, Jr.
Director
Texas Department of Corrections
Huntsville, Texas 77340

Opinion No. H- 899

Re: Whether the estate
of a deceased employee
may be paid for compensa-
tory time.

Dear Mr. Estelle:

You have requested our opinion regarding whether the estate of a deceased employee may be paid for the employee's unused compensatory time.

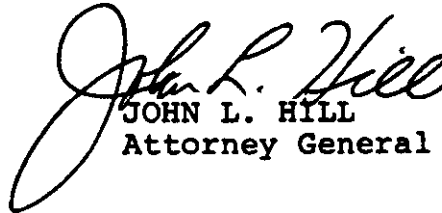
In National League of Cities v. Usery, 49 L. Ed.2d 245 (1976), the United States Supreme Court held unconstitutional those portions of the Fair Labor Standards Act which required states to pay their employees premium rates for overtime work. As we noted in Attorney General Opinion H-883 (1976), this decision means that most state employees are not subject to the Act. The current General Appropriations Act, Acts 1975, 64th Leg., ch. 743, art. V, § 2e, at 2846, permits payment for compensatory time only where an agency or institution is subject to the terms of the Fair Labor Standards Act.

In Attorney General Opinion H-883, we expressed the opinion that persons who were separated from state employment would not be entitled to be paid for compensatory time. In our opinion, a similar result obtains with respect to deceased employees. We are supported in this opinion by section 7g of article V of the General Appropriations Act, which specifically permits payment to the estate of a deceased employee for "all of the employee's accumulated vacation leave and for one-half of his accumulated sick leave." Since the Legislature failed to provide for payment of unused compensatory time to the estate of a deceased employee, it is our opinion that no such payment is authorized.

S U M M A R Y

The estate of a deceased state employee may not be paid for the employee's unused compensatory time.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

jwb