

TRENTON, N. J., JULY, 25, 1949.

DR. WILLIAM S. CARPENTER,  
*President, Civil Service Commission,*  
State House,  
Trenton, New Jersey.

## FORMAL OPINION—1949—No. 79.

DEAR SIR:

I have your memorandum of even date requesting to be advised whether a State employee is entitled to vacation pay in the event of his death on a non-working day immediately preceding the first working day of his vacation. The facts in the case are these: One of the employees of the State Purchase Department was given a twelve-day vacation leave from June 20, 1949, to July 6, 1949. He was killed in an automobile accident on June 19, 1949. The last working day prior to the death of this employee was Friday, June 17th. On the 18th he was not required to work, and June 19th was Sunday.

On October 2, 1946, in response to an inquiry from Dr. Messick, Secretary of the Civil Service Commission, I rendered an opinion with respect to an employee who died while actually on vacation leave and who had not been paid for the vacation period. I called attention to the fact that vacation leave for Civil Service employees was controlled by P. L. 1939, Chapter 233, and that where vacation pay had been earned as specified by the statute, and the employee dies during the vacation leave, the sum due such employee should be paid to his estate.

In the case we are considering, it must be remembered that all work to be done by the employee previous to his vacation had been performed, and he had actually earned his vacation leave. In fact, he had actually started on his vacation, because Saturday and Sunday were not working days.

I cannot differentiate the case now under consideration from the one which was presented to me by Dr. Messick. The vacation leave of an employee is earned by his previous service and to my view, in the instant case, payment should be made to the estate of the decedent for the twelve days' pay which he earned. It would indeed be strange to hold in one case that one who is on vacation leave and dies should be paid, and deny such right to one who has gone on vacation, after having rendered previous service to the State up to and including his last working day preceding such vacation leave, and died.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB:B