

OPINION NO. 73-069

Syllabus:

The National Day of Prayer and Thanksgiving, proclaimed by the President for a 24 hour period beginning 7:00 p.m., Saturday, January 27, 1973, was not a "holiday" for purposes of R.C. 143.12 and R.C. 1.14(J).

To: Joseph J. Sommer, Director, Dept. of State Personnel, Columbus, Ohio
By: William J. Brown, Attorney General, July 5, 1973

I have before me your request for my opinion, which reads as follows:

I have attached herewith a copy of a Proclamation issued by the President of the United States on January 26, 1973. This Proclamation designated 7:00 p.m. EST, January 27, 1973, as a National Moment of Prayer and Thanksgiving, and the 24-hour period beginning then as a National Day of Prayer and Thanksgiving. This was done in recognition of the end of the war in Vietnam. January 27, 1973, was a Saturday and the 24-hour period ended at 7:00 p.m. on the following Sunday. Insofar as I am able to determine, there was no declaration of a National holiday and the Federal offices were open for business on Monday, January 29.

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I, therefore, respectfully request that the Attorney General's Office provide me, as Director of State Personnel, with an opinion as to whether or not the language in O.R.C. Section 143.12 places any legal responsibility upon the State of Ohio to grant a holiday to governmental employees in this state where the President of the United States declares a National Day of Prayer and Thanksgiving over a 24-hour period from 7:00 p.m. EST on Saturday evening until 7:00 p.m. EST on the following Sunday evening. I have requested that Attorney Gallon withhold the institution of any legal action with regard to this matter until such time as I have had a response from your office.

R.C. 143.12 provides as follows:

An employee, whose salary or wage is paid in whole or in part by the state, shall be paid for the holidays declared in this section and shall not be required to work on such holidays, unless in the opinion of the employee's responsible administrative superior failure to work on such holidays would impair the public service. Such holidays shall be * * * any day appointed

and recommended by the governor of this state or the president of the United States as a day of fast or thanksgiving. In the event that any of the aforesaid holidays should fall on Saturday, the Friday immediately preceding shall be observed as the holiday. In the event that any of the aforesaid holidays should fall on Sunday, the Monday immediately succeeding shall be observed as the holiday. * * *

R.C. 1.14 (J) defines legal holiday as, "[a]ny day appointed and recommended by the governor of this state or the President of the United States as a holiday."

The question, then, is whether the President, by his proclamation, intended to appoint a holiday.

The proclamation itself does not mention the term "holiday." In it, the President recommended certain activities, as follows:

I authorize the flying of the American flag at the appointed hour, and I call on all the people of the United States to observe this moment with appropriate ceremonies and activities.

There is no mention in this language of respite from labor. The term "holiday" has been defined as "a day of exemption from labor and a day of amusement or recreation." 50 O. Jur. 2d 460, "Sundays and Holidays," Sec. 2. Moreover, the fact that the proclamation designated a time of the week when few people normally work, indicates that no holiday was intended. The President apparently meant to add to the reverent atmosphere traditionally associated with Sunday, rather than provide an exemption from week-day routine.

Also relevant is the fact, which you mention, that federal employees did not receive a holiday. They, like state employees, are entitled to a Monday holiday whenever a holiday falls on Sunday, but did not enjoy one in this case. See 5 U.S.C.A. Sec. 6103, and Executive Order No. 11582, Sec. 3(a), effective February 11, 1971. This fact would appear to reveal conclusively the President's lack of intention to appoint a holiday.

In specific answer to your question, it is my opinion and you are so advised that the National Day of Prayer and Thanksgiving proclaimed by the President for a 24 hour period beginning 7:00 p.m., Saturday, January 27, 1973, was not a "holiday" for purposes of R.C. 143.12 and R.C. 1.14(J).