

- TITLE:
1. Officers and members of the Missouri State Highway Patrol are civil officers.
 2. Regimental adjutants permanently on military duty and drawing regular salaries from the state are not entitled to draw additional compensation for attendance at regimental schools.

10/9
October 9, 1936



Honorable E. M. Stayton
Brigadier General
Missouri National Guard
Kansas City, Missouri

Dear General Stayton:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"I am in receipt of the opinion of Mr. Russell C. Stone, Asst. Attorney General, Mo., prepared at the request of Colonel Ray E. Watson, that state employees who are members of the National Guard who are properly ordered on military duty, may draw pay for such military service from State Funds although they may, at the same time, be drawing pay from the State for their regular civil occupation.

"Last June, I ordered a School for Lieutenants and also a series of Regimental Schools for officers. Being under the impression that state employees could not properly be paid from State Funds for this military service, I refused to pay several members of the State Highway Patrol and the Regimental Adjutants, who are on the state pay roll for military duty permanently, for attendance at these schools.

Your opinion is requested on the following points:

1. Should I now pay the members of the Highway Patrol and other civil employees

of the state for attendance at these schools?

2. Should I now pay those who are permanently on Military duty and drawing regular salaries from the state (Regimental Adjutants, etc.) for attendance at these schools?"

Your attention is directed to the case of *Gracey vs. St. Louis*, 213, Mo. L. C. 394, wherein the court in discussing who are public officers said:

"* * * For instance, *McFarlane, J.*, in *State ex rel. v. Bus*, 135 Mo. l. c. 352, declares the sum of the matter to be 'that if an officer receives his authority from the law and discharges some of the functions of government he will be a public officer.' An office has been defined as 'a special trust or charge created by competent authority'--more tersely still, 'a public office is a public trust.' His oath, his bond, his liability to be called to account as a public offender for misfeasance or non-feasance, the tenure of his position, etc., have been said to be indicia of a public officer. (*State ex rel. v. May, supra; Throop v. Langdon*, 40 Mich. 682.) And the general doctrine is that the idea of office clearly embraces the ideas of tenure, duration, fees or emoluments, rights and powers as well as that of duty. (6 Words and Phrases, p. 4923.) It has been aptly said that the true test of public office is 'that it is a parcel of the administration of government.'"

Your attention is further directed to the Laws of Missouri,

1931, Page 231, Section 1, relating to the Missouri State Highway Patrol. Said Section reads as follows:

"There is hereby created a force consisting of a superintendent and other officers and patrolmen, as herein provided, to be known as 'Missouri state highway patrol,' which shall be vested with the powers and duties specified in this act and all powers necessary to enable the members of the patrol to fully and effectively carry out the purposes of this act but the powers and duties hereby conferred on the members of such patrol shall be supplementary to and in no way a limitation on the powers and duties of sheriffs, police officers, or other peace officers of this state."

Section 2 of the State Highway Patrol Act, above referred to, reads in part as follows:

"* * *The words 'peace officers' as used in this act shall be deemed and taken to include sheriffs, police officers and other peace officers of this state."

Section 10 of said Act, provides in part as follows:

"The members of the patrol before entering upon the discharge of their duties, shall each take and subscribe an oath to support the Constitution and laws of the United States and the state of Missouri and to faithfully demean themselves in office in the form prescribed by section 6 article XIV of the Constitution of this state and they shall each give bond to be approved by the commission for the faithful performance of the duties of their respective offices * * *."

Other sections of the State Highway Patrol Act, relates

to duties and powers given to the members of the patrol. It is evident, from a thorough reading of this act, that the legislature contemplated that members of the highway patrol should not become a part of, or a supplement to, the military forces of this state.

In keeping within the definition of a public officer, as indicated in the case of *Gracey vs. St. Louis*, supra, we find that members of the Missouri State Highway Patrol are confined in their duties within the purview of the Act. Their duties have been specifically defined by competent authority. It is also to be noted that the members of the patrol are required to take an oath and give bond for the faithful performance of their duties. The members may be called to account for any misfeasance or nonfeasance during the tenure of their office. Thus, it may be seen, in keeping with the aforementioned definition that such members of the highway patrol are public officers or civil officers contra-distinguished from military officers.

We therefore rule, that members of the Missouri State Highway Patrol are civil officers and if any of the members of said patrol hold a commission in the Missouri National Guard, as military officers, then such members would be entitled to receive compensation as military officers when attending schools of instruction in addition to compensation received as being a member of the patrol, even though the compensation accrues at the same time.

As relates to any compensation that might be paid civil employees of the state, who also hold a commission as military officers, we do not, in the course of this opinion, discuss because the facts in each instance do not permit the enunciation of a hard and fast rule. In this respect, I have been largely governed by the cases read; the courts having concerned themselves only with the facts as presented. To discuss the various contingencies that may or may not arise relative to the consistency or compatibility of various offices would be platitudinous.

Under the provisions of Section 13824, R.S. Mo., 1929, it provides in part as follows:

"The military council shall formulate plans for the organization, instruction, equipment and maintenance of the military forces of the state, provide for

encampment and all other field and armory instruction and make allotments of funds and supplies appropriated or furnished for the support, equipment and maintenance of the military forces of the state. All appropriations made for military purposes shall be apportioned and expended by the council."

Under the provisions of Section 13834, R. S. Mo., 1929, relating to the appointment of regimental officers, it provides in part as follows:

"Regimental and separate battalion and squadron staff officers shall be appointed by the commanding general on the recommendation of the regimental or separate battalion or squadron commander."

Section 13873, relating to the authority of military council to fix the pay of officers placed on duty, under the provisions of Chapter 116, R. S. Mo., 1929, provides in part as follows:

"The military council shall have power to fix the pay and allowances of officers and enlisted men placed on duty under the provisions of this chapter."

You will note that the military council may make allotments of funds that have been appropriated and furnished for the support and maintenance of the military forces of the state. It has come to the attention of the writer that regimental adjutants, appointed under the provisions of Chapter 116, supra, are actively engaged in their capacities as military officers in the several regimental offices within this state. These regimental adjutants receive their compensation as fixed by the military council, under the provisions of Section 13824, supra, and as has been further learned by the writer, are continuously and actively engaged in performing their duties as military officers.

Since the military council provides for instruction of the

military officers in the military forces of the state, it is obvious that such instruction or attendance at regimental schools be incident to that of a military officers and we therefore rule, that military officers drawing salaries regularly are not entitled to any additional salary while in attendance at regimental schools.

Very truly yours,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General

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