

PUBLIC EMPLOYEES: Any employees of the state, or any department or
NATIONAL GUARD SERVICE: agency thereof, or of any county, municipality,
COMPENSATION: school district or other political subdivision
who are now or who may become members of the
National Guard, are entitled to their normal
salary in addition to National Guard pay while engaged in the perform-
ance of duty in the National Guard for a period not to exceed ten working
days in any one calendar year. Any city ordinance, whether enacted
prior or subsequent to the enactment of Section 105.270, MoRS, Cum. Supp.
1957, which provides that such an employee as is referred to above shall
receive less than his regular pay for the period referred to above spent
in National Guard duty, is in conflict with Section 105.270, supra, and
to the extent of the conflict, must fail.

September 16, 1959

Major General A. D. Sheppard
Office of the Adjutant General
State Office Building
Jefferson City, Missouri



Dear Sir:

Your recent request for an official opinion reads:

"Your attention is invited to Section 105.270
RSMo 1949, as amended by the 1957 Supplement,
pertaining to military leave of absence for
public officers and employees, which was passed
in 1955.

"Do you interpret the above law to mean that an
employee of the state, or any department or
agency thereof, or of any county, municipality,
school district, or other political subdivision,
and all other public employees of this state who
are now or may become members of the National
Guard are entitled to their normal salary paid
by the state or any other subdivision thereof,
in addition to their National Guard pay while
engaged in the performance of duty or training
in the service of this state for a period not to
exceed ten working days in any one calendar year?

"A City Ordinance, reads, in part as follows:

'Military Leave

1) Temporary Training Periods

a) Any employee who is a member
of a military reserve organization or National
Guard unit shall be entitled to two weeks leave
plus authorized travel time to attend annual
military training camps or naval reserve cruises
in addition to other authorized leaves. Not

Major General A. D. Sheppard

more than one such leave per fiscal year shall be granted.

b) The employee shall be entitled to compensation from the city to equal in amount to the difference between his regular city pay and the military pay for the period of authorized military leave referred to in paragraph a) above.

"Is this ordinance in conflict with Section 105.270 RSMo 1949, as amended by the 1957 Supplement, and whether it makes any difference if the Ordinance were passed prior to or subsequent to the enactment of Section 105.270 as amended?"

Your first question is whether an employee of the state, of a county, or other political subdivision who is now or who may become a member of the National Guard is entitled to his normal salary in addition to his National Guard pay while engaged in National Guard duty for a period not to exceed ten working days in any one calendar year.

We believe that the answer to this question is in the affirmative. Section 105.270, MoRS, Cum Supp. 1957, reads:

"1. All officers and employees of this state, or of any department or agency thereof, or of any county, municipality, school district, or other political subdivision, and all other public employees of this state who are or may become members of the national guard or of any reserve component of the armed forces of the United States, shall be entitled to leave of absence from their respective duties without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits, to which otherwise entitled, for all periods of military services during which they are engaged in the performance of duty or training in the service of this state or of the United States under competent orders; except that an officer or employee while on such leave shall be paid his salary or compensation for a period not to exceed a total of ten working days in any one calendar year.

Major General A. D. Sheppard

"2. Before any payment of salary is made covering the period of the leave the officer or the employee shall file with the appointing authority or supervising agency an official order from the appropriate military authority as evidence of such duty for which military leave pay is granted which order shall contain the certification of the officer or employee's commanding officer of performance of duty in accordance with the terms of such order."
(Emphasis ours.)

The underscored portion of the above section makes it amply clear that such employees are to receive their regular salaries while on National Guard duty. The city ordinance to which you refer reads:

"Military Leave

1) Temporary Training Periods

a) Any employee who is a member of a military reserve organization or National Guard unit shall be entitled to two weeks leave plus authorized travel time to attend annual military training camps or naval reserve cruises in addition to other authorized leaves. Not more than one such leave per fiscal year shall be granted.

b) The employee shall be entitled to compensation from the city equal in amount to the difference between his regular city pay and the military pay for the period of authorized military leave referred to in paragraph a) above."

It is readily apparent that the above ordinance is in conflict with Section 105.270, supra, inasmuch as it reduces the regular pay of a city employee who comes within its compass while such employee is taking National Guard training.

It is a well-known principle of Missouri law that when a city ordinance is in conflict with a statute, the ordinance must fail to the extent of such conflict. This principle is fully set forth in an opinion rendered by this department September 2, 1958 to H. M. Hardwicke, M.D., Acting Director, Division of Health of Missouri, a copy of which opinion is enclosed.

Major General A. D. Sheppard

CONCLUSION

It is the opinion of this department that employees of the state, or any department or agency thereof, or of any county, municipality, school district or other political subdivision who are now or who may become members of the National Guard, are entitled to their normal salary in addition to National Guard pay while engaged in the performance of duty in the National Guard for a period not to exceed ten working days in any one calendar year.

It is the further opinion of this department that any city ordinance, whether enacted prior or subsequent to the enactment of Section 105.270, MoRS Cum. Supp. 1957, which provides that such an employee as is referred to above shall receive less than his regular pay for the period referred to above spent in National Guard duty, is in conflict with Section 105.270, supra, and to the extent of the conflict, must fail.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HFW/mlw
Enclosure