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**ARIZONA ATTORNEY GENERAL**

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Opinion No. 55-132

REQUESTED BY: John M. Hall, Director  
Arizona Game and Fish Department  
Capitol Annex Building  
Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General  
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QUESTION 1: May an employee of the State of Arizona, who is off the job because of a temporary injury, receive compensation from the Industrial Commission and also, during the period of lay-off, receive his salary from the State of Arizona?

CONCLUSION: No.

QUESTION 2: May an employee of the State of Arizona, who receives compensation from the Industrial Commission for an injury which does not necessitate his being off the job, collect both his salary and the Industrial Commission compensation?

CONCLUSION: Employees may collect accident benefits and salary but not compensation and salary.

There is no statutory provision pertaining to payment of wages of a state employee temporarily absent because of illness, disability or industrial accident. Whether or not an employee is paid wages during a temporary absence is a matter within the reasonable administrative discretion of the employer. Under the circumstances, it is conceivable for an employee to be temporarily absent, because of an industrial accident, and under the administrative rules of the employer be entitled to his wages and for the same period of absence be subject to an award of compensation by the Industrial Commission as a result of the accident causing the absence. Although the situation may arise, it is certain that such employee is not entitled to both his wages and his compensation.

The Workmen's Compensation Act provides for the payment of compensation "for a loss sustained on account of such injury \* \* \*" Section 56-931. It also provides that every covered employee is entitled to "accident benefits" which include medical, surgical, hospital or other treatment, together with medicines and supplies. Section 56-938. If the employee continues to draw his salary during the period of absence due to injury, there is no loss for which he may be compensated. The payment of one precludes the payment of the other. A state employee does not come within the rule laid down by

the Supreme Court in the case of Krupp v. J. C. Penney Co., 21 Ariz. 228, 75 P.2d 692, wherein the Court held that the payment of wages by an employer to the absent employee constituted a gratuity, and such payment could not be offset against the compensation awarded by the Industrial Commission. The rule is not applicable to a state employee, for the reason that the state may not make a donation nor make a payment in the nature of a gratuity to any individual under Article 9, Section 7 of the Constitution.

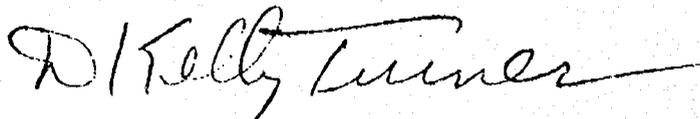
The employee who has been awarded only accident benefits by the Industrial Commission is entitled to such benefits, as well as his salary, when the injury does not result in his being off the job. The determination of this point was made in Lowman v. Industrial Commission, 54 Ariz. 413. The pertinent discussion of the Court follows:

"\* \* \* If she sustained an injury by accident arising out of and in the course of her employment as found by the commission, although not compensable because the injury caused no temporary or permanent disability, still she should have free medical attendance and medicine if such were necessary. One may receive an injury that in no way incapacitates his earning ability but does require medical attendance and care. For instance, an infected finger or arm might not prevent a teacher from doing her work but still need medical care. \* \* \*

The Workmen's Compensation Law provides for accident benefits and we think they may be recovered even though, as stated above, the injury may not be compensable. \* \* \*"

It must be concluded that a state employee who is off the job because of an injury for which he has been awarded compensation, as distinguished from accident benefits, is not entitled to his salary during the period of that absence. Furthermore, it must be concluded that the employee who is not absent from his job, and who is therefore entitled to a salary, is not entitled to an award for compensation from the Industrial Commission, although he may receive accident benefits during such period.

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