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November 25, 1955
Opinion No. 55-241

REQUESTED BY: Honorable Robert Hart, Senator

OPINION BY: ROBERT MORRISON, The Attorney General
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Attorney General

QUESTION 1: Must a city pay an employee engaged in field training with the Arizona National Guard, his full salary for the period of his absence, or only the difference between his regular wages from the city and the amount that he receives from the National Guard so that the total pay received by him during the period in question is the same as it would be had he continued working for the city?

CONCLUSION: The city must pay the salary due the individual on field training without deducting any part of his National Guard or Reserve pay.

QUESTION 2: Is there any provision of law requiring cities to make the same consideration to employees who may be members of the Reserve of other branches of the Armed Forces who attend the annual two weeks training duty?

CONCLUSION: A member of a reserve component of the Armed Forces is entitled to 15 days military leave with his salary and drill pay, without deductions.

Section 64-1016(b) ACA, 1939, as amended, reads as follows:

"64-1016. Leaves of absence. -- * * * * *

(b) An officer or employee of the state or any department or political subdivision thereof who is a member of the national guard shall be entitled to leave of absence from his duties without loss of time, pay or efficiency rating on all days during which he shall be engaged in field training as provided for under the provisions of this act."

A fair construction of the words "*** without loss of time, pay of efficiency rating ***.", would indicate that the guardsman would get his pay from the city without regard to his drill pay while on field training.

The intent of the legislature may have been to give employees of the state or any department or political subdivisions thereof, an added incentive to enlist in the Arizona National Guard. This construction and interpretation of the legislative intent does not appear to be strained or unreasonable in view of other sections of the Military Code.

Section 64-1004 (a), ACA, 1939, 1952 Cum Supp. provides that in the event the governor proclaims the existence of an emergency or deems it necessary to protect lives or property, he may mobilize all or any part of the National Guard or the unorganized militia into the service of the State. Section 64-1004(b), ACA, 1939, 1952 Cum. Supp. provides:

"64-1004. Mobilization. -- * * * * *

(b) The civil authorities of a county or municipality requiring aid of the national guard to quell a riot, insurrection or other civil disturbance shall submit to the governor a written request for aid, setting forth the particular object to be accomplished and the area affected. * * *"

It appearing that the Arizona National Guard is in fact an emergency law enforcement agency of the State and its political subdivisions, the legislature can give advantages to its members who are employed by the State or its subdivisions.

It would not appear that military pay under the foregoing conditions would violate the prohibition against extra compensation contained in Article 4, Part 2, Section 17 of the Arizona Constitution, since the city employee's salary from the city remains the same during his term of office and the legislature has not increased his compensation during his term of office since the military pay statutes were in effect when he was hired by the city. This interpretation of the subject constitutional provision is strengthened by the language contained in the recent decision of the Arizona Supreme Court in Earhart v. Frohmler, 65 Ariz. 221, 178 P.2d 436.

Section 12-425, ACA, 1939, 1952 Supplement, provides as follows:

"12-425. Leave of absence for training duty --
All officers and employees of the state, or of any county, city or town, or of any agency or political subdivision thereof, shall be granted leave of ab-

sence from their duties without loss of time, pay or efficiency rating, on all days during which they are employed, under orders, on training duty with any branch of the armed forces of the United States, for a period of not to exceed fifteen (15) days in any one calendar year. Such period of time spent in training duty under orders shall not be deducted from the vacation period with pay to which any officer or employee may otherwise be entitled."

This section grants to the members of the reserve of other branches of the military, the same privileges granted members of the National Guard. The provision that they shall be granted leave of absence from their duties without loss of time, pay or efficiency rating, is subject to the same construction and interpretation of legislative intent as that section pertaining to the National Guard.

It is the opinion of this office that a member of the Arizona National Guard or a reserve component of any branch of the Armed Forces of the United States, shall be entitled to his full pay from the state, county or city, or of any agency or political subdivision thereof, while attending field training under proper orders. The city must pay the salary due the individual on field training without deducting any part of his National Guard or Reserve pay. A member of a reserve component of the Armed Forces is entitled to 15 days military leave with his salary and drill pay without deductions.

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