

THE INDUSTRIAL COMMISSION OF MISSOURI: : The Industrial Commission of Missouri,
Powers of the Commission, the separate : a member or a Referee may approve
members thereof, and of Referees. : settlements any time, including a
: case on appeal, and may make a tempo-
: rary or final award and perform any
: other act concerning awards except
: to review awards, the full Commission
: only having the right to review
: awards. The Division does not have
: exclusive authority to make
: awards. Rules A and B giving
: the Division such exclusive
: power, and depriving the Com-
: mission and its separate mem-
: bers of the power to hold
: hearings, make awards or ap-
: prove compromise settlements
: are invalid.

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January 21, 1952

1-28-52

Honorable Carl J. Henry
Chairman
Industrial Commission of Missouri
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Dear Chairman Henry:

This will be in response to your letter re-
questing this Department to construe the provisions
and meaning of numerous sections in Chapters 286 and
287, RSMo 1949, relating to the powers of the Indus-
trial Commission, the powers of the individuals members
of the Commission and the powers of Referees respect-
ing the enforcement of certain provisions of the Work-
men's Compensation Act of Missouri. Your letter reads
as follows:

"We request a legal opinion on the fol-
lowing questions:

"1. Is a Compromise Settlement of a
Workmen's Compensation claim under
Section 287.390, R.S. Mo. 49 valid
when approved by only one member of
the Industrial Commission, when the
case is pending before the Commission?
Can such a settlement be approved by
the Commission, or one member, when
the case is pending in court on ap-
peal?

"2. Is a Temporary or Final Award, or
any other decision or order in Work-
men's Compensation cases pending be-
fore the Industrial Commission, valid
when made by only one member of the
Commission?

Honorable Carl J. Henry

"In this connection we cite you to Section 286.010 for creation of the Industrial Commission; to Section 287.560 for powers of the Commission; to Section 287.020 (8) for definition of terms.

"Under Section 287.410 the Industrial Commission may delegate powers to the Division of Workmen's Compensation. Under authority of this section Rules A and B on attached sheet were adopted and filed with the Secretary of State. Also see Section 287.610.

"Question: When a settlement of a case pending before the Division of Workmen's Compensation (not appealed to the Commission) is made, can the Industrial Commission, or one member, approve the same, or does the Division alone have such authority?"

We shall here consider and determine the first question contained in paragraph 1 of your letter, whether a compromise settlement effected between the parties to a claim under Section 287.390 is valid when approved by only one member of the Commission when a case is pending before the Commission. Section 287.390, RSMo 1949 was in the Revision of our statutes 1929, as Section 3333. The section in R.S. Mo. 1939 was Section 3723. Section 287.390 provides that voluntary agreements in settlement of a claim between the parties to a claim may be made, and that nothing contained in Chapter 287 shall be construed as preventing such settlements. This section reads as follows:

"Nothing in this chapter shall be construed as preventing the parties to claims hereunder from entering into voluntary agreements in settlement thereof, but no agreement by an employee or his dependents to waive his rights under this chapter shall be

Honorable Carl J. Henry

valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by the Commission, nor shall the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death."

The section states that no compromise settlement agreement shall be valid until approved by the Commission. This section does not in terms provide that one member of the Commission alone may approve such settlements. Section 3333, R.S. Mo. 1929, and many other sections of that Revision of our statutes relating to the authority of one member of the Workmen's Compensation Commission to approve settlements and to perform other acts and duties incident to the enforcement of the Compensation Act were considered and construed by the Kansas City Court of Appeals in the case of Morgan vs. Jewell Const. Co., et al., 91 S.W. (2d) 638. That Court in a well-considered and comprehensive opinion held, construing the whole Act on the powers of members, that a single member of the Commission may approve a compromise settlement. That opinion decides also other questions submitted in your letter. We shall discuss and quote excerpts from the opinion on such other questions and this particular question as we proceed in this opinion, but we pause here to quote the holding of the Court on the question of approving settlements where, l.c. 641, the Court said:

"* * * Under all of the circumstances, we think that a proper construction of the act requires a holding that a single member of the commission may approve a settlement of the kind in question * * *."

The Court stressed the fact that, while Section 3333, R.S. Mo. 1929, apparently imposed the duty of approving contracts of settlement upon the Commission as a body, other sections of the Act referred to single members of the Commission as having such authority, and that since such other sections were retained in the chapter giving such authority to

Honorable Carl J. Henry

individual members of the Commission, this must be taken, the Court said, as the construction by the Legislature of its intention for individual members of the Commission to retain such powers, and that such construction by the Legislature of its own acts must be given due weight by the Courts. On this question the Court, l.c. 641, said:

"It is well established that a construction of a statute by the Legislature, as indicated by the language of other or subsequent enactments, is entitled to consideration as an aid to interpreting a statute. 59 C.J. p. 1033; State ex rel. v. Hackman, 275 Mo. 47, 54, 204 S.W. 513; State ex inf. v. Long-Bell Lumber Co., 321 Mo. 461, 12 S.W. (2d) 64; Evans v. McLalin, 189 Mo. App. 310, 175 S.W. 294; State ex rel. v. Wilson, supra; Crohn v. Kansas City Home Telephone Co., 131 Mo. App. 313, 109 S.W. 1068. And where the controversy has arisen since the enactment of the subsequent statute or amendment wherein the Legislature had indicated that the statute should be taken to mean a certain thing, such legislative construction should be given great weight. * * * ."

A careful comparison of the sections construed by the Kansas City Court of Appeals in the Morgan case as constituting authority for a single member of the Commission to approve compromise settlements reveals that all of them are retained in our present Revision of 1949.

The Supreme Court of this State in the case of Liberty Mutual Insurance Company vs. Jones, 130 S.W. (2d) 945, gave its expression of the general belief that individual members did have various powers concurrent with those of the whole Commission where, l.c. 959, the Court said:

"In the event of an accidental injury the parties to a claim may enter into a voluntary agreement in settlement thereof on forms prepared and supplied by the Commission. The informal conferences mentioned above are between

Honorable Carl J. Henry

the parties and some member, referee or legal advisor or the Commission; and are held to encourage such voluntary settlements. * * * ."

The Morgan case, supra, as decided by the Kansas City Court of Appeals has never been overruled or questioned. It is the law in this State on the issues and the principles there decided. The construction given the there named sections of the Compensation Act by the Court in the Morgan case to the effect that individual members of the Commission may approve settlements was well known and understood by the Legislature and such sections have remained undisturbed, and the construction of that Court of such statutes on the subject has remained unchanged for a period of more than sixteen years. The Court of Appeals of this State was, and is in that case the Court of last resort on the issues decided, and its judgment on the question here being considered was and is final, as the Act now stands.

59 C.J., pages 1061, 1062 and 1063, on the effect of construction of a statute by a Court of last resort, states the following applicable text:

"Where a statute that has been construed by the courts of last resort has been reenacted in same, or substantially the same, terms, the legislature is presumed to have been familiar with its construction, and to have adopted it as a part of the law, unless a contrary intent clearly appears, or a different construction is expressly provided for; and the same rule applies in the construction of a statute enacted after a similar or cognate statute has been judicially construed. * * * ."

It would clearly appear, we believe, considering the above authorities, and in further consideration of the facts, since none of said sections of the Compensation Act so construed have been repealed, and since they have had both legislative and judicial sanction for many years it is compelling that they should be and they are here construed to give the separate members of the Commission the authority to approve compromise settlements of claims for

Honorable Carl J. Henry

compensation when such claims are pending before the Commission and that such settlements, when so approved, are valid.

In the first paragraph of your letter you submit a second question, to-wit: "Can such a settlement be approved by the Commission, or one member, when the case is pending in court on appeal." We believe a compromise settlement when pending in court, or on appeal, may be approved by the Commission, or a single member of the Commission, or a Referee.

The case of Tokash vs. Workmen's Compensation Commission, et al., 139 S.W. (2d) 978, was before our Supreme Court on appeal on the question whether a stipulation judgment of a Circuit Court, reversing the award of the Commission, was valid, as based upon a settlement and agreement that the case should be reversed with instructions to the Compensation Commission to enter a new award of no compensation, without first obtaining the approval of such compromise settlement by the Workmen's Compensation Commission. The Supreme Court held that the stipulation judgment of the Circuit Court on its face was not invalid, because the Circuit Court did have jurisdiction of the subject-matter and the parties, but that the stipulation judgment of the Circuit Court was without force and invalid, because, as the facts disclosed, the approval of the Compensation Commission had not first been obtained. The Supreme Court held that the judgment of the Circuit Court on the stipulation would have been valid had they presented to the Circuit Court, the case being in the Circuit Court also on appeal, along with the stipulation of settlement and for reversal of the case, the approval of the settlement by the Workmen's Compensation Commission. On this point, and so holding, the Supreme Court, l.c. 984, said:

"* * * But is the stipulation judgment void on its face? We do not think so. That the circuit court had jurisdiction of the subject matter and the parties in the compensation appeal, cannot be and is not questioned. The only thing that vitiates the stipulation judgment is that it was arrived at without the approval of the commission. There is nothing on the face of the judgment that shows that the approval of the commission was not

Honorable Carl J. Henry

obtained, and, since right action is presumed (Rollins et al. v. Shaner et al., 316 Mo. 953, 292 S.W. 419), the presumption would be that such approval was obtained. But the facts, unfolded, disclose that such approval was not obtained. In the situation, we think that the present suit to set aside will lie, and so rule."

This case is a clear example of approval by our Supreme Court of the right of the Commission or any member thereof, or a Referee, to approve a compromise settlement when pending in Court, or on appeal.

The Tokash case, supra, we believe, is controlling authority on this question and requires us to here hold, and we do hold, that such a settlement may be approved by the Commission, or any member of the Commission, or a Referee, when the case is pending in any Court on appeal.

We believe the authorities we have here cited and quoted, and our conclusions thereon, correctly answer in the affirmative the two questions you submit in paragraph 1 of your letter.

The next question submitted in your letter, contained in paragraph 2 thereof, states: "Is a Temporary or Final Award, or any other decision or order in Workmen's Compensation cases pending before the Industrial Commission, valid when made by only one member of the Commission."

Section 41 of the original Compensation Act (Laws of Missouri, 1925, page 375, l.c. 396) provided that "The commission or any of its members shall hear in a summary proceeding the parties at issue, their respective witnesses and shall determine the dispute, etc." This section authorizing members to conduct hearings was carried down from the original Act into the Revision of 1929 as Section 3339, and in the Revision of 1939 as Section 3729. The original Section 41 (Section 3339, R.S. Mo. 1929), (Section 3729, R.S. Mo. 1939), was repealed, Laws of Missouri, 1945, page 2000, and a new Section 3729 was enacted in lieu thereof.

The new Section 3729, Laws of Missouri, 1945, l.c. 2000, enacted in lieu of Section 3729, R.S. Mo. 1939, omitted the sentence: "The commission or any of its members shall

Honorable Carl J. Henry

hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute" and inserted in the new Section 3729 in place thereof, the following:

"The division, through a referee, shall hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute. * * * ."

It will be observed that the Legislature in enacting the new section, 3729, giving the Division of Compensation power, through Referees, to hold hearings did not preclude the Commission or separate members of the Commission from holding hearings.

The Legislature in the same Act which included the new Section, 3729 (Senate Bill 248, Laws of Missouri, 1945) enacted also Section 3747--now Section 287.610, RSMo 1949--a part of which said Section 3747 then read, and, now in said Section 287.610 reads as follows:

"* * * Any award by a referee upon an original hearing shall have the same force and effect, be subject to the same review and appellate procedure, and enforceable in the same manner as provided elsewhere in this chapter for similar awards by the commission or any member thereof. * * * ."

Our present Section 287.610 was Section 3357 in the Revision of 1929. That section in that revision was specifically construed by Judge Bland in the Morgan case, supra, as giving the same authority to Referees to hold hearings as was vested by the statute in the Commission or one of its members. The Kansas City Court of Appeals in said case, l.c. 641, on this question, said:

"The Legislature in 1929 (see Laws 1929, p. 444) amended what is now section 3357 of the Revised Statutes (Mo. St. Ann. Sec. 3357, p. 8287) (or section 59 of the original act (Laws 1925, pp.375, 402)) by creating the position of referee. The

Honorable Carl J. Henry

amendment allows the commission to appoint special referees, not exceeding five in number. It gives such referees authority to hear and determine claims upon original hearing, only, and in this respect they are given the same authority and jurisdiction as the commission or one of its members. * * * ."

The St. Louis Court of Appeals, 40 S.W. (2d) 503, considered the case of State ex rel. Kenney, et al. vs. Missouri Workmen's Compensation Commission, on the question of whether an appeal could be taken directly to the Circuit Court from an award made by a single Commissioner instead of from a review by the whole Commission. Among other matters discussed in the case the Court, l.c. 504, regarding the intention of the Legislature in providing for a single member of the Commission to act alone in certain cases, said the following:

"It would thus seem that the Legislature intended and expected that in most cases the claim of an employee would be presented to an individual commissioner or a referee for the obvious purpose of expediting the great number of claims that of necessity arise under the act, and in the belief that a percentage of cases would thus be finally disposed of by the award of such single commissioner or referee, and therefore the Legislature provided that only when either party is dissatisfied with the finding and award of the commissioner, and a rehearing is requested, that it be mandatory for the full commission to review the evidence and make an award, * * * ."

The terms of Section 287.610 are in identical words with the provisions of Section 3357 of the 1929 Revision, which said Section 3357, was construed in the Morgan case, supra, as giving Referees concurrent authority with single members of the Commission to hold hearings. Section 287.610, RSMo 1949, in part, on the question of awards by Referees, reads as follows:

Honorable Carl J. Henry

"* * * Any referee shall have power to approve contracts of settlement between the parties to any claim under this chapter, to the same extent as elsewhere provided for the commission or one of its members. Any award by a referee upon an original hearing shall have the same force and effect, be subject to the same review and appellate procedure, and enforceable in the same manner as provided elsewhere in this chapter for similar awards by the commission or any member thereof. * * * ."

Revealing that it was the intention to still authorize separate members of the Commission, and the Commission itself, to hold and conduct hearings of claims for compensation, the Legislature, at the same Session--1945--where the new Section 3729 provided that the Division, through its Referees; may hold hearings, there was enacted by the Legislature, Laws of Missouri, 1945, page 1101, l.c. 1104, Senate Bill 246, including Section 6 thereof, and containing as a part of said Section 6, sub-section (1), and which sub-section (1) of said Section 6 of the Act is now sub-section (9) of Section 286.060, RSMo 1949, expressly conferring the power to hold and conduct hearings upon the Commission or any member thereof, which sub-section (9) reads as follows:

"(9) The commission or any member thereof may hold hearings, require the attendance of witnesses, administer oaths and take testimony."

It, therefore, appears plain that the Legislature in enacting said sub-section (9) of said Section 286.060 at the Session of 1945, was fully aware of that part of said Section 287.610, RSMo 1949, and the construction thereof given by the Kansas City Court of Appeals in the Morgan case; supra, as such provision then appeared in Section 3357, R.S. Mo. 1929, giving the Division, through Referees, the same authority to hold hearings as was then and is now possessed by single members of the Commission.

The authority as expressed in said sub-section (9) for the Commission or separate members of the Commission

Honorable Carl J. Henry

to hold hearings is comprehensive and entirely without limit as to any particular kind of hearing, and is not restricted to any one of the four divisions of the Department of Labor and Industrial Relations. We believe under the terms of said sub-section (9) the Commission, or any separate member thereof, is authorized to hold a hearing on any question or controversy arising within any of its divisions.

It is our belief, under the above cited statutes and authorities, that a temporary or final award, or any other decision or order in Workmen's Compensation cases pending before the Industrial Commission are valid when made by only one member of the Commission. This is our answer to the question submitted in paragraph 2 of your letter.

In submitting the next and last question, after paragraph 2 in the letter, it is stated:

"In this connection we cite you to Section 286.010 for creation of the Industrial Commission; to Section 287.560 for powers of the Commission; to Section 287.020 (8) for definition of terms.

"Under Section 287.410 the Industrial Commission may delegate powers to the Division of Workmen's Compensation. Under authority of this section Rules A and B on attached sheet were adopted and filed with the Secretary of State. Also see Section 287.610.

"Question: When a settlement of a case pending before the Division of Workmen's Compensation (not appealed to the Commission) is made, can the Industrial Commission, or one member, approve the same, or does the Division alone have such authority?"

Your letter thus directs our attention in the preparation of this opinion to Section 286.010 of said

Honorable Carl J. Henry

Chapter 286, Sections 287.020, 287.390, 287.410, 287.560 and 287.610 of Chapter 287, all RSMo 1949. We have carefully considered the provisions of each of such sections as their terms apply to the questions you submit for our consideration.

Section 286.010, RSMo 1949, creating "The Department of Labor and Industrial Relations" of Missouri reads, in part, as follows:

"There is hereby created and established a separate department of the state government to be known as 'The Department of Labor and Industrial Relations.' Said department shall be under the control, management and supervision of a commission to be known and designated as 'The Industrial Commission of Missouri.' * * * ."

There are other sections of said Chapters 286 and 287 defining the powers of the Industrial Commission of Missouri, and the Division of Workmen's Compensation, which make them all, jointly, one complete and inseparable department of the State Government of this State, although by Section 286.110, RSMo 1949, there are created within the department four operating divisions. Said Section 286.110 in that behalf, reads as follows:

"There is hereby created within the department of labor and industrial relations the following divisions:

"(1) The division of workmen's compensation;

"(2) The division of employment security;

"(3) The division of industrial inspection; and

"(4) The division of mine inspection."

Section 286.060, RSMo 1949, defines the duties, powers and jurisdiction of the Industrial Commission of

Honorable Carl J. Henry

Missouri in its control, management and supervision of the Department of Labor and Industrial Relations in separate, numbered paragraphs. Said section, respecting such authority in its general preamble and such paragraphs thereof as we believe are pertinent here, read as follow:

"It shall be the duty of the industrial commission, and it shall have power, jurisdiction and authority:

"(3) To have all powers, duties and responsibilities conferred or imposed upon it by the workmen's compensation law (chapter 287, RSMo 1949) and by the unemployment compensation law (chapter 288, RSMo 1949)

"(8) To adopt all regulations necessary to the efficient internal management of the department, not inconsistent with any provisions of law, and such regulations shall become effective immediately upon adoption, unless the commission shall otherwise order; to adopt regulations governing its proceedings in connection with the exercise of its quasi-judicial functions, and such regulations shall become effective ten days after copies thereof are filed in the office of the secretary of state.

"(9) The commission or any member thereof may hold hearings, require the attendance of witnesses, administer oaths and take testimony."

In this connection we refer, as suggested in your request for this opinion, to paragraph 8 of said Section

Honorable Carl J. Henry.

287.020 for terms defined in said paragraph relating to the Division of Workmen's Compensation, named in said Section 286.110, supra, as a division of the Department of Labor and Industrial Relations of this State. We cite and quote also paragraph 9 with paragraph 8 of said Section 287.020, which sections read as follow:

"8. As used in this chapter and all acts amendatory thereof, the term 'commission' or 'workmen's compensation commission of Missouri' shall hereafter be construed as meaning and referring exclusively to the industrial commission of Missouri, * * * * *

"9. The term 'division' as used in this chapter means the division of workmen's compensation of the department of labor and industrial relations of the state of Missouri."

We have already observed from the provisions of Section 286.010 that "The Department of Labor and Industrial Relations" and "The Industrial Commission of Missouri" are one and the same entity.

The effect of the noted sections of said Chapters 286 and 287, was, and is, to clearly express the intention of the Legislature to be that the acts, authority, procedure and doings of the Division of Workmen's Compensation in whatsoever that Division, any Referee, or the Workmen's Compensation Commission, or of any member of the Workmen's Compensation Commission, may do, in the exercise of authority, shall be held to be the acts of the Department of Labor and Industrial Relations of Missouri itself.

With your letter you submit for our information and consideration copies of Rules "A" and "B", adopted by the Commission, which, respectively, state:

"A. It is hereby provided and ordered by the Industrial Commission of Missouri that the Division of Workmen's Compensation shall be and is hereby authorized to exercise all the powers and functions

Honorable Carl J. Henry

of the Commission in the administration of the Missouri Workmen's Compensation Law, except the power and duty to review any award made under said law or hold any hearing or rehearing as authorized by Section 3730 and 3731, R.S. Missouri, 1939, and except such other powers and functions for the exercise of which provision is hereinafter made. It is intended by this provision to delegate all such powers to the Division of Workmen's Compensation and to designate said Division as the agency of the Commission to receive and file claims for compensation, reports, answers, settlements, agreements, applications for review, and notices as may be required by the Workmen's Compensation Law.

"B. Parties to claims under the Workmen's Compensation Law may enter into voluntary agreements in settlement or compromise thereof, but no agreement or contract of settlement or compromise shall be valid until approved by the Commission, or until approved by a Referee of the Division of Workmen's Compensation if the claim is pending in the Division. No such agreement shall be valid unless made after seven days from the date of the injury or death."

Your letter states that said Rules A and B were adopted by the Commission and filed with the Secretary of State by authority of Section 287.410.

Said Section 287.410 reads as follows:

"The division shall have and exercise such of the powers and functions of the commission in the administration of the workmen's compensation law as the commission may by regulation prescribe; provided, however, that the power and duty to review any award made under the workmen's compensation

Honorable Carl J. Henry

law, as authorized by sections 287.470 and 287.480, may not be delegated, but such power and duty shall be exercised exclusively by the commission; and provided further, that the commission shall exercise no authority with respect to the selection or tenure of office of any individual appointed or employed by the division in the administration of the workmen's compensation law. (L. 1945, p. 1996 Sec. 3744A)."

As we understand said Sections 287.410 and 287.610, and other sections of the Act relating to the creation and powers of the Industrial Commission, the Commission does not, we believe, derive its powers to create and promulgate rules and regulations for the administration of the Act by the Division of Compensation, such as Rules A and B submitted to us, from Section 287.410, RSMo 1949, as your letter states, in paragraph (4) thereof, but, rather, from Section 286.060, RSMo 1949.

Section 287.410 does provide that the Division of Compensation shall have and exercise such of the powers and functions of the Commission, in the administration of the Act, as the Commission may, by regulation, prescribe, etc., but the authority of the Commission to make and define the terms and provisions of such regulations and file them with the Secretary of State is found in sub-section (8) of said Section 286.060, which sub-section states such power as follows:

"To adopt all regulations necessary to the efficient internal management of the department, not inconsistent with any provisions of law, and such regulations shall become effective immediately upon adoption unless the commission shall otherwise order; to adopt regulations governing its proceedings in connection with the exercise of its quasi judicial functions, and such regulations shall become effective ten days after copies thereof are filed in the office of the secretary of state."

Honorable Carl J. Henry

We are advised that said Rules A and B were filed with the Secretary of State by the Industrial Commission on July 7, 1948, and became effective from and after July 18, 1948. In this particular, it then is apparent that the Commission in adopting said Rules, A and B, proceeded under said sub-section (8), supra, of Section 286.060. Rules A and B on the question of their validity, we believe, must be tested by the terms of said sub-section (8), which provides that such rules may be made which are " * * * not inconsistent with any provision of law. * * * ."

The question then presents itself, are said Rules A and B inconsistent with any provision of law?

Rules A and B propose to and do remove the authority to approve settlements and hold hearings, receive and file claims for compensation, answers, agreements, applications for review and notices required by the Act from the Commission itself, and from the separate members of the Commission and vest such authority exclusively in the Division. Rule A authorizes the Division to exercise all the powers and functions of the Commission in the administration of the Workmen's Compensation law, except those authorized by Sections 287.470 and 287.480. Rule B provides that no agreement or contract of settlement or compromise shall be valid until approved by the Commission or by a Referee of the Division, if the claim is pending in the Division. Both of said Rules A and B apparently intend to combine and make applicable the terms of both said Sections 287.410 and 287.610 in effecting such rules. This is especially noticeable since Section 287.610 deals principally with the appointment and duties of the Referees, the appointment of whom is provided for in said section. So that, in the authority exercised under Section 287.410, to adopt Rules A and B, the terms of Section 287.610 are relied upon--since, in the last sentence of paragraph 4 of your letter requesting this opinion you especially direct our attention to said Section 287.610--in providing for the Division to perform all and sundry the functions of the Commission, because the Referees of the Division are the only officers of the Division upon whom such duties could be placed. A careful reading of said Section 287.610 discloses that the terms of the section itself render said Rules A and B inconsistent with the section in respect to the exercise of the power to approve settlements by the Commission or a member, where one sentence of the section states:

Honorable Carl J. Henry

"* * * Any referee shall have power to approve contracts of settlement between the parties to any claim under this chapter, to the same extent as elsewhere provided for the commission or one of its members. * * * ."

Likewise, Rules A and B are in conflict and inconsistent with said Section 287.610 in depriving the Commission and separate members of the Commission of the right to hold hearings and make awards. The section, in part, states the following:

"* * * Any award by a referee upon an original hearing shall have the same force and effect, be subject to the same review and appellate procedure, and enforceable in the same manner as provided elsewhere in this chapter for similar awards by the commission or any member thereof. * * * ."

Sub-section (9) of said Section 286.060 provides that the Commission or any member thereof may hold hearings, require the attendance of witnesses, administer oaths and take testimony. Said Rules A and B conflict and are inconsistent with that provision of law.

Said Rules A and B in depriving the Commission and the separate members thereof of the right to make orders, awards and to hold hearings are in conflict and inconsistent with the terms of Section 287.240, RSMo 1949, which provides in sub-section (3) of paragraph 4 thereof, with respect to the distribution of compensation due dependents of a deceased employee under the Act, that:

"The commission, any member thereof or a referee may, in its or his discretion, order or award the share of compensation of any such child or children to be paid to the parent, grandparent, or other adult next of kin or legal guardian of such child or children for the latter's support, maintenance and education, * * * ."

Honorable Carl J. Henry

Rules A and B deprive the separate members of the Commission of the right to approve compromise settlements of claims, and are thereby in conflict and inconsistent with Section 287.390, RSMo 1949 (Section 3333, R.S. Mo. 1929) as construed by the Kansas City Court of Appeals in the Morgan case, 91 S.W. (2d) 638, and with that decision itself and other decisions by our Courts of Appeals which, while not ruling directly that separate members of the Commission may exercise the right to approve compromise settlements of claims, do discuss and in effect hold that the intent of the Legislature, expressed in the statutes in permitting separate members of the Commission, Referees and the Commission to approve settlements encouraged voluntary settlements, and those cases commended the approval of settlements by separate members of the Commission. To quote from such cases would unduly and without need lengthen this opinion, and for that reason we omit quoting from such cases but for the convenience of the reader we give the style and citation of such cases.

Burnham vs. Keystone Ser. Co., 77 S.W. (2d) 848,
(Mo. App.), l.c. 854;
Brown vs. Corn Products Refining Co., 55 S.W.
(2d) 706, (Mo. App.), l.c. 710.

We believe, and here so conclude, that said Rules A and B adopted by the Commission, insofar as such rules deprive the Commission and its separate members of the authority to perform the official functions connected with the administration of the Workmen's Compensation Act which are named and prohibited to such officials in such rules and by providing that such functions shall be performed only by the Division of Workmen's Compensation are ineffective and invalid.

Considering the above-cited and quoted decisions of our Courts, the provisions and terms of our statutes cited and quoted, as they express the clear intention of the Legislature in regard to the subject, we believe, in answer to your last question, that when a settlement of a case, pending before the Division of Workmen's Compensation (not appealed to the Commission), is made, the Industrial Commission, or one member, or a Referee may approve the same, and that the Division alone does not have such authority, and that, as we have hereinabove held in answering questions 2 and 3 submitted to us, it would make no difference where a case is pending

Honorable Carl J. Henry

after a claim is filed, the Commission itself, any individual member of the Commission, or a Referee representing the Division, is vested by such authorities with the power to approve a compromise settlement of a claim for compensation.

CONCLUSION.

It is, therefore, the opinion of this Department, considering the premises, that:

1) A compromise settlement of a Workmen's Compensation claim under Section 287.390, RSMo 1949, is valid when approved by only one member of the Industrial Commission when the case is pending before the Commission.

2) A settlement may be approved by the Commission or one member or a Referee, when the case is pending in Court on appeal.

3) A temporary or final award, or any other decision or order in Workmen's Compensation cases pending before the Industrial Commission except the power and duty to review any award made under the Workmen's Compensation Law as authorized by Sections 287.470 and 287.480, RSMo 1949, are valid when made by only one member of the Commission.

4) When a settlement of a case pending before the Division of Workmen's Compensation (not appealed to the Commission) is made, the Industrial Commission or one member thereof, or a Referee of the Division of Workmen's Compensation may approve the same, and the Division alone does not have such authority.

5) Rules A and B adopted by the Commission are in conflict and inconsistent with the provisions of law hereinabove pointed out, and are invalid.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
ATTORNEY GENERAL

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