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PHOENIX, ARIZONA

MAY 1, 1969

DEPARTMENT OF LAW LETTER OPINION NO. 69-10-L (R-74)

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REQUESTED BY: C. R. KRIMMINGER, Executive Assistant
Office of the Governor

QUESTION: May the Governor establish conditions precedent to granting of his approval for travel by private aircraft, such as a requirement that the owner of the aircraft obtain an endorsement from his liability insurance carrier naming the state as an additional insured?

ANSWER: Yes.

A.R.S. § 38-623 reads as follows:

"A. First class travel by air, railroad or bus is permitted. Railroad sleeping accommodations shall be considered as transportation, and the cost thereof may be allowed each person traveling. Private conveyance may be allowed for travel within the state by way of the most direct regularly traveled route computed by highway map or speedometer reading when traveling by automobile, and shall be paid at a rate not to exceed ten cents per mile, or if by airplane, by the most direct air mileage route listed by the civil aeronautics board at actual rates not to exceed ten cents a mile, <u>provided the governor authorizes such air travel and notifies the state auditor in writing</u>.

"B. When private conveyance is used without the state, mileage shall not be allowed for an automobile, but an amount equal to that of first class travel by railroad, excluding sleeping accommodations, may be claimed. When travel outside the state is by airplane, air mileage shall not be allowed, but an amount equal to that of first class

airways fare may be claimed by the employee or officer authorized to travel, provided the governor authorizes such air travel and notifies the state auditor in writing.

"C. When one or more officers, employees or other public agents traveling on official business are transported in the same private conveyance, one mileage only may be allowed." (Emphasis added.)

The concern expressed in your letter of April 25, 1969, is that the potential liability of the state in the event of an accident when private aircraft are used by state officers and employees is such that the Governor may deem it advisable to condition his approval of the use of private aircraft upon certain conditions such as an added endorsement on the owner's liability insurance policy.

The term "private conveyance" as used in A.R.S. § 38-623 has been interpreted as including travel by airplane owned or controlled by the public officer or employee. See Attorney General Opinions No. 61-6 and 61-8-L, and our letter to Mr. Thomas Hall dated June 24, 1963. Until 1955, the statute allowed reimbursement for travel by private aircraft if authorized by the head of the department. In our Opinion No. 54-227-L to former Governor Pyle, we stated that under the former statutory provision, "each department head, in arriving at a decision in the matter of authorizing an employee to travel within the state by private airplane should be cognizant of the increased rates for industrial compensation which are charged when an employee of a department uses this means of private conveyance."

The words "provided the governor authorizes" as used in A.R.S. § 38-623, as amended, imply a discretionary power in the Governor. (cf. Palmcroft Dev. Co. v. City of Phoenix, 46 Ariz. 200, 49 P.2d 626.) It is our opinion that the Governor may exercise his judgment and discretion in deciding whether to authorize use of a private airplane as a means of travel

for state officers and employees. Logically, all factors bearing upon the question should be considered by him, including the potential effects on the state's insurance premium rates and the availability of adequate liability insurance coverage, as well as the industrial accident coverage and rates.

There is no valid reason why the Governor could not make his authorization of the use of a private airplane conditional upon the furnishing of evidence of coverage of the state by the owner's liability insurance policy. The Department of Finance has no express statutory power to adopt regulations in this area, however, and it is our opinion that only the Governor can impose such a condition precedent to his authorization. (We note in passing that A.R.S. § 38-623 has not yet been amended to change the reference therein from the State Auditor to the Commissioner of Finance.)

Respectfully submitted,

GARY K. NELSON
The Attorney General

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