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PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 66-15-L (R-46)

REQUESTED BY: James Thomas, Executive Secretary
Crippled Children's Services

QUESTION: Is Governor's signature on out-of-
state travel order required before
the travel is performed in order to
enable state employees to recover
their expenses for such travel?

ANSWER: No, as qualified.

A.R.S. § 38-622 provides that:

"A. When the official duties of a public officer or employee require him to travel from his designated post of duty, he shall be allowed expenses therefor.

B. Such expenses shall be authorized by travel orders signed by the head of the department or agency, or by a person to whom such authority has been properly delegated." (Emphasis added.)

A.R.S. § 38-626 provides as follows:

"When the official duties or activities of a public officer or employee of the state or of any department, institution, commission, board or other agency of the state necessitate traveling without the state, the travel order shall be countersigned by the governor and

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shall be authority for the state auditor to pay such claims from any funds available for such travel but the authorization of the governor may be dispensed with when, by shortest practical routing, travel is necessary through adjoining states to reach remote areas of this state."

There is no Arizona case interpreting the meaning of "authorized" as used herein. A New York case discusses the meaning of "authorize" and "approve" and the court held that the word "approve" as used in a statute has broader significance than "authorize," and means to ratify or confirm a thing already done or to sanction a thing that may be done in the future, whereas "authorize" means to permit a thing to be done in the future. (Gray v. Gill, 210 NYS 658, 660, 125 Misc. 70.)

The term employed, in § 38-622 is that the state employee's travel expenses "shall be authorized by travel orders."

A.R.S. § 38-626 dealing with out-of-state travel states that the travel order "shall be countersigned by the governor and shall be authority for the state auditor to pay such claims. . . but the authorization of the governor may be dispensed with when . . . travel is necessary through adjoining states to reach remote areas of this state." (Emphasis added.)

Thus, in both A.R.S. § 38-622 and § 38-626 the term "authorized" or "authorization" is used, but in each instance they are used to qualify the right of the officer or employee to be paid his expenses rather than to qualify his duty to perform the travel. In other words, the travel statutes quoted above appear to state that whenever the official duties of a state officer or employee require him to travel, he shall do so, and that he will be allowed to recover his expenses of such travel provided the payment to the officer or employee of such expenses is authorized

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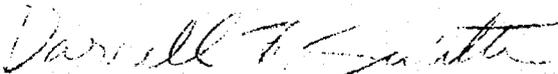
by properly executed travel orders. Thus the signatures on the travel orders of the department head and the governor must precede the issuance of a warrant by the state auditor for reimbursement, but need not precede the travel.

There is some support for this view in the case of Lee v. Coleman, 63 Ariz. 45, 60, 159 P.2d 603 (1945), which arose under a predecessor travel expense statute, § 12-713 of the Arizona Code Ann. 1939. The court there dealt with travel expenses incurred by a county board of supervisors, and the court approved the action of the supervisors in ratifying the incurring of travel expenses after the travel was performed.

There is a split of authority in the cases as to whether the word "authorized" as used in statutes is permissive or mandatory insofar as the granting of the authorization is concerned. (See e.g., McLaughlin v. Niagara Falls Board of Education, 38 Misc. 2d 143, 237 NYS 2d 761; cf. Griffin v. Board of Supervisors, 203 Va. 321, 124 S.E.2d 227.)

Therefore, we express no opinion as to whether the Governor or the department head have a mandatory duty or discretionary power to sign travel orders for reimbursement of expenses for travel by state employees required to travel from their post of duty.

Respectfully submitted,


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The Attorney General

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