

Department of Law
Opinion No. R75-33

December 3, 1975

Mr. Raymond S. Long, Director
Arizona Department of Administration
The Capitol
Phoenix, Arizona 85007

Dear Mr. Long:

You have requested an opinion of this office to the following two questions:

1. With respect to the legislative provisions on per diem allowance, what leeway, in terms of administration, do State agencies have?
2. Can State agencies require employees or officials to furnish receipts for either food or lodging and, further, can they reimburse the employee for only those amounts supported by receipts?

We have received four other questions from other agencies bearing on the same subject. Since the Finance Division of your Department is empowered by A.R.S. § 38-622(C) to prescribe the manner and form for submission of claims for travel expenses, these questions and the responses are included in this opinion. The additional questions are as follows:

3. May officers and employees be required to submit receipts to their supervisors to support travel expense claims?
4. Would the requirement stated in No. 3 immediately above violate any existing rules or regulations established pursuant to state law?
5. Does the Assistant Director for Finance, Department of Administration, have the authority to deny a claim for actual travel expenses which does not exceed the statutory limitation for any one day?
6. Is the twenty-four-hour day mentioned in the statute a regular calendar day, thus permitting expenses not to exceed the statutory allowance for each date that the officer is in travel status?

Before answering these questions, this office believes a discussion of what expenses and allowances officers, deputies, and employees are entitled to claim when traveling on state business is in order. A.R.S. § 38-622 authorizes payment for travel expenses and allowances, and A.R.S. § 38-624 limits the amount that may be claimed to thirty dollars per day for travel within the state and forty dollars for travel without the state. A.R.S. § 38-624(C) further limits subsistence allowance to meals, lodging, and incidental expenses relating to travel (except transportation and communication expenses).

Prior to 1970, A.R.S. § 38-624(A) (the statute allowing officers and employees who travel on state business to claim in-state travel expenses) provided in part:

Reimbursement for subsistence may be claimed for actual and necessary expenses not to exceed . . . dollars for travel within the state . . .

In 1970, by Ch. 202, L. 1970, the Legislature amended this subsection to read in part:

A per diem subsistence allowance may be claimed in an amount not to exceed . . . dollars for travel within the state . . .

The Legislature also added a new subsection to A.R.S. § 38-624 which provided:

C. The per diem subsistence allowance includes payment for meals, lodging and other incidental expenses relating to travel except transportation and communication expenses.

Prior to the 1970 amendment, this office had issued a non-published opinion construing Arizona Constitution, Art. 4, Pt. 2, § 1, as amended 1968, and A.R.S. § 38-1104 relating to claims of legislators for subsistence payments. The opinion said legislators might be reimbursed only for expenses actually incurred. After the enactment of Chapter 202, Laws 1970, a formal opinion was issued by this office (Attorney General Opinion No. 70-22) which reaffirmed the prior unpublished opinion and concluded that Chapter 202, Laws 1970, did not affect the rule that legislators might be paid only for expenses actually incurred. The opinion was based upon Art. 4, Pt. 2, § 1, of the Arizona Constitution, which provided legislators were to be "reimbursed for travel and subsistence expenses incurred." That portion of the Constitution has since been repealed; however, the rationale of that opinion and its conclusion, when considered in the context of travel expenses for state officers, deputies, and employees, leads this office to conclude that such persons may claim only those expenses actually incurred while on travel status.

Initially, this office recognizes that the words "reimbursement . . . for actual and necessary expenses" were removed in the 1970 amendment and the words "per diem subsistence allowance" were substituted. However, when the new language is considered in the context of its common and approved meaning (A.R.S. § 1-213) and in light of A.R.S. § 38-624(C), the conclusion is compelled that no change in substance was made by the 1970 amendment. The word "per diem" is used as an adverb and is defined in Webster's Third New International Dictionary and in Black's Law Dictionary, fourth edition 1968, as:

by the day: for each day

The phrase "subsistence allowance" is defined in Webster's Third New International Dictionary as:

an allowance as expenses incurred in performance of a duty while temporarily away from one's residence

Although other definitions of this phrase are given in Webster's Third New International Dictionary, this seems to be the only logical one to be used, since A.R.S. § 38-622(A) provides:

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

The expenses and allowances referred to in A.R.S. § 38-622(A) are specified in A.R.S. § 38-624 as a "per diem subsistence allowance" and also in A.R.S. §§ 38-623 and 38-625 as "transportation expenses."

The "per diem subsistence allowance" in A.R.S. § 38-624(C) includes "payment for meals, lodging, and other incidental expenses related to travel except transportation and communication expenses." (Emphasis added.) The word "payment" is defined in Webster's Third New International Dictionary as:

the act of paying or giving compensation: the discharge of a debt or an obligation

or

something that is paid: something given to discharge a debt or obligation or to fulfill a promise

The only obligation or promise assumed by the State is to pay for the officer's, deputy's, or employee's "meals, lodging and other incidental expenses relating to travel."

It is thus concluded that an eligible officer, deputy, or employee may claim only those expenses actually incurred for meals, lodging, and incidental travel expenses. Any amount paid in excess of expenses incurred would be a gift or donation which is prohibited by Art. 9, § 7, Arizona Constitution which provides:

. . . Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

Additionally, any excess amount received would be compensation or an emolument paid the officer, deputy, or employee in excess of that authorized by the Legislature, and prohibited by A.R.S. §§ 38-464 and 38-601. These statutes provide:

No salary or compensation shall be paid to deputies, assistants, clerks or employees of a state office, board or commission unless authorized in the appropriation made for that office, board or commission by the legislature, and under regulations the legislature prescribes. A.R.S. § 38-464.

State or county officers, employees, members of boards and commissions, and deputies, stenographers, clerks and employees of any such officer, board or commission, or of any institution, shall receive the salary provided by law, and shall not, under any pretext, receive any salary or emolument in excess of the salary so provided. A.R.S. § 38-601.

The answer to your first question is contained in the language of Attorney General Opinion No. 70-22 and A.R.S. §§ 38-622(C) and 41-732. That opinion provides in part:

. . . you have the duty to audit each claim for subsistence submitted and, in connection therewith, the right to investigate each claim and the right to require submission of vouchers and receipts that you may deem necessary to verify the fact that the subsistence payment is in fact a "reimbursement" of "expenses incurred" . . . In addition, you may follow any reasonable policy and practice that you may deem proper and necessary to implement this . . . directive.

A.R.S. § 38-622(C) provides in part:

Claims by public officers, deputies, and employees for . . . per diem subsistence allowances shall be submitted on forms prescribed by and in the manner required by the department (sic) of finance.

A.R.S. § 41-732(B) requires the audit and investigation of all claims against the State. Thus, an agency may be allowed such administrative leeway as deemed appropriate by the Division of Finance, so long as the Division fulfills its statutory obligation.

Questions 2 and 3 are essentially the same, and because question 4 is connected to question 3, all three will be answered together. As we have noted above, the Assistant Director for the Division of Finance of your Department is required to audit travel expense claims to the extent deemed necessary to satisfy himself that the claims are valid. In this regard, he is empowered by A.R.S. §§ 35-181.01(A) and 38-622 to prescribe the procedures for payment of claims against the State. He may thus require agencies to furnish receipts for all expenditures and if this is done, the agency must, of course, require receipts of its officers, deputies, or employees. Even if this is not done, however, the agency head could nevertheless require the officer, deputy, or employee to submit receipts; because under present procedures, the agency head or supervisors of such persons are required to certify that the amounts claimed for travel and subsistence were expended for a valid public purpose. If the agency head or supervisor concludes that he can make this certification only upon presentation of receipts,

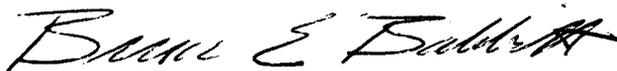
then receipts may be required by the agency. The only limitation on the agency would arise when your Department, through its Division of Finance, has set forth specific requirements in this area. In such case, the agency would be obliged to carry out these requirements, but could impose additional requirements not inconsistent therewith. It is our understanding the Division of Finance has not promulgated any rules or regulations making specific requirements in this area and, therefore, agencies are free to require receipts. If the requirement of receipts is imposed by an agency, the agency head or supervisor is not required to approve the claim unless they are furnished; and until the affected employee furnishes the required receipts, he need not be reimbursed for his expenses.

The answer to question 5 is "No." There is no authority for the Assistant Director for Finance, Department of Administration, to deny a claim for actual expenses incurred which do not exceed the statutory limit for a day of travel so long as the claim is substantiated in accordance with the Division's procedure for substantiating travel claims. See A.R.S. § 38-622.

In response to question 6, it is our conclusion that the "twenty-four-hour day" mentioned in A.R.S. § 38-624 is intended to be a calendar day. If the Legislature had intended that a twenty-four-hour day be twenty-four consecutive hours in travel status, then, we think, the Legislature would have said in "twenty-four-hour period." Therefore the maximum amount officers and employees may recover for per diem subsistence expenses incurred per calendar day is thirty dollars for in-state travel and forty dollars for out-of-state travel.

A copy of Attorney General Opinion No. 70-22 is enclosed for your convenient reference.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce E. Babbitt". The signature is written in a cursive, flowing style with some flourishes.

Bruce E. Babbitt
Attorney General