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ARIZONA ATTORNEY GENERAL

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STATE CAPITOL
PHOENIX, ARIZONA

August 23, 1965

DEPARTMENT OF LAW OPINION NO. 65-18 (R-128)

REQUESTED BY: Honorable Dan E. Garvey
The State Examiner

QUESTION: Should a sheriff be paid his travel expenses for attendance at conventions of sheriffs under A.R.S. Section 11-444 or A.R.S. Sections 38-621 through 38-627?

ANSWER: A.R.S. Section 11-444.

The board of supervisors as the financial agent of a county cannot allow a claim of an officer or agent of the county for expenses if the legislature has not made provision for their payment and if the expenditure is not for a public purpose. Austin v. Barrett, 41 Ariz. 138, 16 P.2d 12 (1932); Maricopa County v. Norris, 49 Ariz. 323, 66 P.2d 258 (1937); Kerby v. State, 62 Ariz. 294, 304, 157 P.2d 698 (1945).

Arizona Revised Statutes Section 11-601.2 provides that the necessary expenses incurred by a county officer in the conduct of his office is a county charge. Arizona Revised Statutes Section 11-444, as amended, specifically deals with the travel expenses of sheriffs. It reads as follows:

"A. The sheriff shall be allowed actual and necessary expenses incurred in pursuit of criminals, for transacting all civil or criminal business and for service of all process and notices, and such expenses shall be a county charge, except that the allowable expenses of service of process in civil actions shall be as provided in § 11-445.

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"B. The board shall, at the first regular meeting in each month, set apart from the expense fund of the county, a sum sufficient to pay the estimated traveling and other expenses of the sheriff during the month, which shall be not less than the amount paid for the expenses for the preceding month. The sum so set apart shall thereupon be paid over to the sheriff for the payment of such expenses.

"C. At the end of each month the sheriff shall render a full and true account of such expenses, and any balance remaining unexpended shall be paid by the sheriff into the county treasury. If the sum so paid over is insufficient to pay the expenses incurred during the month, the excess shall be allowed and paid as other claims against the county."
(Emphasis supplied)

In Opinion No. 60-20-L this office advised the Pima County Attorney that in view of the provisions of A.R.S. Section 11-444, a sheriff is not limited in the amount of traveling expenses he may recover to the amounts stated in A.R.S. Section 38-621 and sections following (comprising Title 38, Chapter 4, Article 2 of A.R.S.). See also Opinions of the Attorney General Nos. 59-24-L, 55-197 and 45-79.

Although it is not necessary for this office to decide in this opinion whether A.R.S. Section 38-621 and sections following would be held to apply to county officers, we quote the following from Opinion No. 59-24-L:

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"That Article (Title 38, Chapter 4, Article 2 of A.R.S.) expressly limits its application to a public officer, deputy or employee of the state or of any department, institution or agency thereof. The Article does not apply to county officers."

It is, therefore, the opinion of the Department of Law that a sheriff is entitled to his actual and necessary travel expenses without the imposition of the limitation contained in A.R.S. Sections 38-621 through 38-627. However, the board of supervisors, being the agency of the county vested with responsibility for allowing claims, must be satisfied in each instance when examining the claims of sheriffs, including those for attendance at conventions of sheriffs, that the expenses claimed are for a public purpose and are the actual and necessary expenses thereof.

Respectfully submitted,


DARRELL F. SMITH
The Attorney General

DFS/cah