

August 12, 1948

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Judge

Frieda Braun Earhardt, Secretary
Arizona State Board of Nurse Examiners
State House
Phoenix, Arizona

Dear Mrs. Earhardt:

We have your letter requesting an opinion for the State Board on the following questions:

"The State Board of Nurse Examiners requests your opinion in regard to expenses incurred in the matter of St. Monica's Hospital versus members of the Board, Maricopa County Superior Court, No. 55779, Division 4."

We first call your attention to Section 67-1301, A.C.A., 1939, Cumulative Pocket Supplement, 1947. Said section so far as pertinent to your question reads as follows:

"The board shall cause the prosecution of all persons violating the provisions of this article."

Your State Board has filed several claims for witness fees, travel expense and subsistence. All these claims have been assigned to Mrs. Frieda Braun Earhardt, Secretary-Treasurer. These claims were assigned by persons who were called in as witnesses in a mandamus action against your Board.

Under the provisions of the Budget Financial Administration Act of 1945, General Appropriations, section 1 reads as follows:

"Subject to applicable state laws, the sums or sources of revenue herein set forth are appropriated for the 34th and 35th fiscal years for the purposes and objects hereinafter specified."

Subdivision 20 of said Act provides that ninety per cent of all collections received during the fiscal year is appropriated for personal services, current expenditures and capital outlay, and

that ten per cent shall be credited to the general fund.

Section 34-131, A.C.A., 1939, "Witness fees and mileage," reads as follows:

"A material witness attending the trial of any civil action, shall be paid one dollar and fifty cents (\$1.50) for each day's attendance to and including the time it was necessary for him to leave his residence and go to the place of trial, and his discharge as such witness; and also mileage from his place of residence to the place of trial, for each mile actually and necessarily traveled, fifteen cents (15¢) to be computed one (1) way only, provided he resides in the county where the trial is had. Witness fees and mileage shall be allowed for each material witness, whether subpoenaed or not, if such witness resides anywhere in the county. If the witness resides out of the county he shall be allowed his mileage and per diem from the place and time he enters the county on his way to attend the trial."

Under the Budget Financial Administration Act of 1945 there has been appropriated to your Board for current expenditures and capital outlay ninety per cent of the fees collected. Defending this mandamus action undoubtedly is a current expenditure, and under Section 34-131 your Board is authorized to pay \$1.50 for each day's attendance at the trial, including the day the witness left his residence. Also, the witnesses are entitled to 15¢ per mile to be computed one way only. Witnesses living out of the county are paid a per diem of \$1.50 per day, and 15¢ per mile to be computed one way only from the county line to the place of the trial.

It is therefore our opinion that the sum of \$109.78 claimed by the witnesses is a current expenditure and should be paid by the State Auditor.

The difference of \$55.33 that includes amounts of \$6.50 for subsistence and mileage computed outside of Maricopa County should be taken care of by requesting the Legislature to make a

Frieda Braun Earhardt, Secretary
State Board of Nurse Examiners

August 12, 1948
Page Three

special appropriation authorizing the State Board to pay the sum of \$55.33 to your secretary, as the claims have been assigned to her.

Respectfully,

EVO De CONCINI
Attorney General

MAURICE BARTH
Assistant Attorney General

MB:a
enc.