February 7, 1953
Opinion No. 53-28

TO: The Honorable John C. Smith, Jr.
Speaker, House of Representatives
State Capitol Building
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

RE: Reimbursement of Legislator's lodging expenses.

QUESTION: May a representative member, while performing an official duty, receive reimbursement for his lodging while away from Phoenix and also receive reimbursement for lodging expenses in Phoenix for the same night?

The pertinent statute involved is Section 2-110, A.C.A. 1939, as amended, provides as follows:

> "2-110. Reimbursement of members of legislature.-- Any member of the legislature, while absent from his usual place of residence in the service of the state during a session of the legislature, shall be reimbursed for his actual and necessary expenditures for subsistence, incidentals, and lodging, not to exceed the sum of seventeen dollars ($17.00) per day, and all employees or officers shall be reimbursed for such expenses in an amount not to exceed the sum of ten dollars ($10.00) per day. All claims for reimbursement as provided in this section shall be filed as other claims against the state, and shall be accompanied by receipts or vouchers evidencing such expenditures." (Emphasis supplied)

Sections 2-111 to 2-114, A.C.A. 1939, as amended, provide for a joint legislative committee enumerating their duties and authorizing them to employ assistants and providing an appropriation of $85,000.00. The question being, when a legislative member is on official duties prescribed by Section 2-112, supra, can he receive reimbursement for his lodging while on official business when away from Phoenix, and also receive reimbursement for lodging expenses in Phoenix for the same night?

As emphasized, Section 2-110, supra, states that when a member is absent from his usual place of residence (his home) in the services of the state during a legislative session, he may be reimbursed for

his actual and necessary expenses not to exceed the sum of $17.00 per day. Thus, when a member of the state operations committee is out of Phoenix on official business during a legislative session, he would still fall within this provision of $17.00 per day limitation.

We realize that if a member were to relinquish his hotel room for one day he might not be able to find suitable lodging when he returns a day or two later, especially in Phoenix during the "tourist season". Nevertheless, it is only a matter of convenience that he keeps the same lodging and would not be a necessary expense.

In the case of EARHART v. FRONMILLER, (1947) 65 Ariz. 221, the Arizona Supreme Court, in discussing the Act authorizing reimbursement to legislators for actual and necessary expenses said, l.c.225:

> "***We are not unmindful of the fact that this Act can be the subject of abuse. On the other hand the Act itself provides many safeguards; e.g., ***and finally, there is a maximum per diem expense beyond which they may not go, which maximum is manifest out of line with the expense money allowed other employees of the State, or with the current purchasing power of the dollar." (Emphasis supplied)

It is therefore our opinion that a legislator could not be reimbursed for lodging expenses incurred in two different places for the same night when he occupied only one place of lodging for the entire night.

ROSS F. JONES
THE ATTORNEY GENERAL

IRWIN GANTOR
Assistant to the
Attorney General

IG:EM

53-28