April 2, 1953
Opinion No. 53-63

TO: Mrs. Jewel W. Jordan
State Auditor
Capitol Building
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

RE: Travel expenses

QUESTION: Whether or not an officer or employee, at the state level, may incur expenses for the state in out-of-state travel to and from conferences and conventions and further, what is the state auditor's responsibility in regard to same.

Officers and employees of the state are authorized to incur expenditures for travel in Section 12-713, A.C.A. 1939, Supplement, to-wit:

> "12-713. Mileage and traveling expenses.--- (a) Authorization for travel. Whenever the official duties of a public officer or employee make it necessary for him to travel from his designated post of duty he shall be allowed expenses. All travel shall be authorized by a travel order signed by the head of the issuing department or agency, or by a person to whom such authority has been properly delegated. * * *"

Subsection (b) contemplates out-of-state travel:

> "(b) Travel without the state. Whenever 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 this shall be authority for the state auditor to pay such claims from any funds available for such travel." (Emphasis supplied)

The Legislature has expressly qualified this authorization by requiring the official duties of the employment to necessitate such travel; Subsection (a), supra. Again reiterated in Subsection (f):

> "(f) Who may travel. The provisions of this section shall apply to any public officer, deputy or employee of the state or of any department, institution, or agency thereof and to any member of any board, commission or other agency of the state when traveling on necessary public business when issued a proper travel order."

The question resolves itself in each instance to a determination of whether or not the official duties of the office necessitate such expenditure.

Although the auditor is required to investigate the nature of the expenditure to determine its "public purpose" pursuant to Section 4-302, A.C.A. 1939, our Supreme Court has interpreted that duty in FROHMILLER v. BOARD OF REGENTS, (1946) 64 Ariz. 362, 171 P. 2d 356; l.c. 366:

> "For the guidance of the auditor we submit the following 'rule of thumb' in the handling of claims: <u>If a claim shows on its face that it is for a public purpose</u> and is properly itemized, accompanied by vouchers, is approved by the head of the department and there are still unappropriated funds for the payment of same, it is not her duty to investigate further, and she should approve the claim and issue the warrant." (Emphasis supplied)

It may be seen that the germane issue in this case is what constitutes a "public purpose on its face".

The Supreme Court of Arizona has defined "public purpose" in WARD v. FROHMILLER, (1940)55 Ariz. 202, 100 P. 2d 167, and quoted same with approval in FROHMILLER v. BOARD OF REGENTS, supra; l.c. 366:

> "* * *We think the natural and logical definition of the words 'public purpose' as so used is synonymous with 'a purpose approved and authorized by law'. * * *"

The auditor's determination of "public purpose on its face" may, therefore, appropriately be restated to be "approved and authorized by law on its face."

In the WARD case, supra, the court being called upon to make the same decision, looked for express or implied statutory duties of the employment that necessitated such expenditure, and in so

doing ruled that the auditor is entitled to indulge in certain presumptions which we believe solve the problem at hand, l.c. 211:

> "If the general purpose be one authorized by law, the question of whether the particular activity is reasonably necessary under the circumstances is primarily for the head of the department to decide, subject to a review by the courts for abuse of discretion. In the Proctor case, supra, we said:
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> > 'In examining these items, it is apparent that in many cases the particular subject-matter of the claim may or may not be used for a public purpose. We think, therefore, that the rule that it is presumed a public officer will do his duty applies, and that the auditor and the treasurer, when it appears a claim is for an item which may or may not be for a public purpose, according to the way in which it is used, are entitled to presume that the head of the department has applied the article to the public, and not to the private, use, and are not responsible, unless there is something on the face of the claim which should advise them that the use is private and not public.'
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> Following this rule, we are of the opinion that the presumption was that the state department used a reasonable discretion in sending representatives to the meeting in question; that the amount of money for which the claims were made out was a reasonable expenditure for those purposes, and was actually so expended. The responsibility for determining whether these things are true is not placed by the law upon the auditor, but upon the head of the department who approves the claim. * * *" (Emphasis supplied)

It necessarily follows that inasmuch as the responsibility for determining the fundamental nature of the expenditure falls upon the department head and not the auditor, if the department head approves the claim and it is countersigned by the governor, the auditor is accordingly entitled to the presumptions quoted and by virtue of Section 12-713 (b), supra, is authorized to allow the claim and the warrant should issue forthwith.

CONCLUSIONS

1. State officers and employees are authorized to incur expenditures for travel by virtue of Section 12-713, A.C.A. 1939, Supplement;

2. The expenditure must be necessitated by the official duties of the employment;

3. The department head is charged with the responsibility of determining whether or not the official duties of the employment necessitate the expenditure and his approval is tantamount to a determination that the expenditure is "authorized by law on its face";

4. If the department head has approved the travel order, and the governor has countersigned it, the expenditure is prima facie approved and authorized by law, thus for a "public purpose on its face", and the state auditor is not required to investigate further and should approve the claim and issue the warrant.

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