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ARIZONA ATTORNEY GENERALJanuary 2, 1959
Opinion No. 59-26

- REQUESTED BY: Honorable Clarence L. Carpenter, President
Arizona State Senate
- Honorable W. L. Cook, Speaker
House of Representatives
- OPINION BY: ROBERT MORRISON, The Attorney General
- QUESTION 1: Is each legislator entitled to receive \$1800.00 for each regular session of the legislature, payable at the rate of \$200.00 each week for the first nine weeks regardless of the length of the regular session?
- CONCLUSION: Yes.
- QUESTION 2: Under the amendment to the State Constitution and the provisions of Senate Bill No. 225, approved by the Governor on March 18, 1958, is there any specific length to a regular or special session of the legislature?
- CONCLUSION: No.
- QUESTION 3: In filing claims in the same manner as other officers for travel and other necessary expense incurred in attendance upon a regular or special session, is a member whose home is out of the City of Phoenix entitled to:
- (a) Mileage and meals for each day he attends the legislature if he returns home each night, or
- (b) Lodging accommodations, meals and incidental expenses up to \$9.00 per day if he resides in Phoenix during such legislative session?
- CONCLUSION: 3(a) Yes.
3(b) Yes.
- QUESTION 4: Should members of the legislature who return home each night obtain travel orders from the President of the Senate or the Speaker of the House, as the case may be, prior to incurring travel expense, and, if so, should these be for each day's or each week's travel?

CONCLUSION: Yes.

QUESTION 5: Should travel orders be secured by out-of-town members who reside in Phoenix during a legislative session, and, if so, should these be on a daily or weekly basis?

CONCLUSION: Yes.

QUESTION 6: Should all claims, including those with receipts for lodging expenses, be approved by the President of the Senate or the Speaker of the House before filing them with the Auditor?

CONCLUSION: Yes.

QUESTION 7: Is a member of the legislature who travels on legislative business, pursuant to the authority contained in Art. 4, Pt. 2, § 1, par. 2(b) of the State Constitution, as amended, entitled to mileage for his trips both ways?

CONCLUSION: Yes.

QUESTION 8: May an out-of-town member of the legislature retain his lodging accommodations in Phoenix and claim reimbursement for this expense in addition to travel and subsistence while traveling on legislative business?

CONCLUSION: Yes (qualified).

Article 4, Part 2, Section 1, of the State Constitution entitled "The Legislature", reads as follows:

"2. THE LEGISLATURE

§ 1. Senate; house of representatives; members; apportionment of representatives; compensation of members and attaches or employees; mileage; special session upon petition of members

Section 1. (1) The Senate shall consist of two members from each county elected at large. Beginning with the Twenty-second Legislature the House of Representatives shall be composed of not to exceed eighty members, to be apportioned to the counties according to the number of ballots cast in each county

at the preceding general election for governor in the manner herein provided. Such apportionment shall be made every four years and shall be on the basis of one Representative for each county and one additional Representative for each thirty-five hundred and twenty ballots cast at the last preceding general election, according to the official canvass of the votes cast in each county.

In the event that on the basis prescribed the number of Representatives so determined shall exceed eighty, the unit of apportionment shall be increased by ten or such multiple of ten as will reduce the number of Representatives to eighty.

Not less than eight months prior to the regular general election following such apportionment at which Representatives are to be chosen, the secretary of state shall notify the board of supervisors of each county the number of Representatives such county will be entitled to elect, and the board shall not less than six months prior to such election, divide the county into as many legislative districts as there are Representatives to be elected. The district shall have as nearly as may be an equal voting population, be compact in form, and include no non-contiguous territory. The board shall give not less than thirty days' notice of intention to divide the county into legislative district by publication in two successive issues of a newspaper of general circulation published in the county.

(2) From and after the adoption of this amendment members of the legislature shall receive \$8.00 per day; provided however, that they shall receive such compensation for a period not to exceed 60 days in any one regular session and for a period of not to exceed 20 days in any one special session. They shall also receive mileage one way by the shortest practical route at the rate of 20¢ per mile. The total number of attaches or employees of the Senate shall not exceed 14 and the total number of attaches or employees of the House of Representatives shall not exceed a number equal to two-thirds of the members thereof, and the compensation of such attaches or employees except the chief clerk or secretary of each branch shall not exceed \$5.00 per day.

* * * * *

This section was amended in the primary election, September 9, 1958, by the addition of Paragraphs 2(a) and 2(b), which read as follows:

"2. THE LEGISLATURE

§ 1. * * * * *

Section 1.

* * * * *

2(a) Commencing with the first regular session of the Twenty-fourth Legislature, members of the Legislature shall each receive a salary of one thousand eight hundred dollars as compensation for services in each regular session, to be payable at such times as shall be provided by law. In addition, members of the Legislature shall each receive a salary of twenty dollars for each day for a period not to exceed twenty days in any one special session, and for each day required for meetings called by or at the direction of the presiding officer of either house of the Legislature. In no event, however, shall the total salary paid under the provisions of this paragraph exceed three thousand six hundred dollars per annum to any one member of the legislature. As amended, election Sept. 9, 1958.

2(b) In addition to the salary provided in paragraph 2(a), each member of the Legislature shall also be reimbursed for travel and other necessary expenses incurred in attendance upon regular sessions, special sessions or other meetings called by or at the direction of the presiding officer of either House of the Legislature at the same rate and in the same manner as for other public officers, except that such reimbursement shall not be paid for any regular session or special session to members of the Legislature whose usual place of residence is within the city limits of the city in which the state capitol building is situate, and except that reimbursement shall not be paid for any other meetings to members of the legislature whose usual place of residence is within the city limits of the city at which such meeting is held. As amended, election Sept. 9, 1958.

* * * * *

It will be noted that in the amendment of September 9, 1958, no change was made in Paragraphs 1 to 3, inclusive, of Article 4, Part 2, Section 1, of the State Constitution. Paragraphs 2(a) and 2(b) were merely added thereto by said amendment.

Senate Bill No. 225, approved by the Governor, reads as follows:

"CHAPTER 90
Senate Bill No. 225
AN ACT

RELATING TO THE LEGISLATURE; PROVIDING FOR PAYMENT OF AN ANNUAL SALARY AND REIMBURSEMENT FOR EXPENSES TO MEMBERS OF THE LEGISLATURE; PROVIDING FOR THE CONDITIONAL AMENDMENT OF SECTION 41-1103, ARIZONA REVISED STATUTES, AND THE CONDITIONAL REPEAL OF SECTIONS 41-1134 AND 41-1302, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 41-1103, Arizona Revised Statutes, is amended to read:

41-1103. REIMBURSEMENT OF EXPENDITURES

A. Commencing with the first regular session of the twenty-fourth legislature, members of the legislature shall each receive a salary of one thousand eight hundred dollars as compensation for services in each regular session, to be payable at the rate of two hundred dollars each week for the first nine weeks of each regular session. In addition, members of the legislature shall each receive a salary of twenty dollars for each day for a period of not to exceed twenty days in any one special session, and for each day required for meetings called by or at the direction of the presiding officer of either house of the legislature. In no event, however, shall the total salary paid under the provisions of this subsection exceed three thousand six hundred dollars per annum to any one member of the legislature.

B. In addition to the salary provided in subsection A, each member of the legislature shall also be reimbursed for travel and other necessary expenses incurred in attendance upon regular sessions, special sessions or other meetings called by or at the direction of the presiding officer of either house of the legislature at the same rate and in the same manner as for other public officers, except that such reimbursement shall not be paid for any regular session or special session to members of the legislature whose usual place of residence is within the city limits of the city in which the state capitol building is situate, and except that reimbursement shall not be paid for any other meetings to members of the legislature whose usual place of residence is within the city limits of the city at which such meeting is held.

SEC. 2. REPEAL

Sections 41-1134 and 41-1302, Arizona Revised Statutes are repealed

* * * * *

A.R.S. Sections 41-1134 and 41-1302, which were repealed, are now covered in A.R.S. Section 41-1103, Paragraph B, as amended.

A.R.S. Section 41-1103, Paragraph B, as amended, and Paragraph 2(b) of Art. 4, Pt. 2, § 1, of the State Constitution, as amended, provides that members of the legislature shall be reimbursed for travel and other necessary expenses incurred in attendance upon regular sessions, special sessions, or other meetings called by the presiding officer of either house of the legislature at the same rate and in the same manner as for other public officers, except that reimbursement shall not be paid for any meetings to members of the legislature whose usual place of residency is within the city limits of the city at which such meeting is held.

The authority to reimburse public officers for travel expenses is contained in Chapter 4, Article 2, A.R.S. Sections 38-621 to 38-627, inclusive, which read as follows:

"ARTICLE 2. TRAVEL EXPENSES

§ 38-621. Persons eligible to receive travel expenses

The provisions of this article shall apply to every public officer, deputy or employee of the state, or of any department, institution or agency thereof, and to a member of any board, commission or other agency of the state when traveling on necessary public business away from his designated post of duty and when issued a proper travel order.

§ 38-622. Authorization for travel

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

B. Such expenses shall be authorized by travel orders signed by the head of the department or agency, or by a person to whom such authority has been properly delegated.

§ 38-623. Means of travel

A. First class travel by air, railroad or bus is permitted. Pullman fares shall be considered as transportation, and costs

not to exceed a standard lower berth may be allowed each person traveling. Private conveyance may be allowed for travel within the state by way of the most direct regularly traveled route computed by highway map or speedometer reading when traveling by automobile, and shall be paid at a rate not to exceed seven cents per mile up to and including June 30, 1956, and thereafter such travel expense shall be paid at a rate not to exceed eight cents per mile, or if by airplane, by the most direct air mileage route listed by the civil aeronautics board at actual rates not to exceed ten cents a mile provided the governor authorizes such air travel and notifies the state auditor in writing.

B. When a private conveyance is used without the state, mileage shall not be allowed for an automobile, but an amount equal to that of first class travel by railroad may be claimed. When travel outside the state is by airplane, air mileage shall not be allowed, but an amount equal to that of first class airways fare may be claimed by the employee or officer authorized to travel, provided the governor authorizes such air travel and notifies the state auditor in writing.

C. When one or more officers, employees or other public agents traveling on official business are transported in the same private conveyance, one mileage only may be allowed.

§ 38-624. Subsistence

A. Reimbursement for subsistence may be claimed for actual and necessary expenses not to exceed eight dollars for travel within the state up to and including June 30, 1956, and thereafter not to exceed nine dollars for such expenses, for each twenty-four hour day for each person.

B. Reimbursement for subsistence may be claimed for actual and necessary expenses not to exceed twelve dollars for travel without the state, for each twenty-four hour day for each person.

§ 38-625. Receipts for lodging and transportation

Claims which include lodging or transportation by common carrier shall not be allowed unless accompanied by receipts, but receipts for transportation by means of local streetcars, local busses and taxicabs shall not be required, and such means of local transportation may be allowed and paid for and shall not be considered as regular common carrier transportation.

§38-626. Travel without the state

When 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 shall be authority for the state auditor to pay such claims from any funds available for such travel, but the authorization of the governor may be dispensed with when, by shortest practical routing, travel is necessary through adjoining states to reach remote areas of this state.

§ 38-627. Use of state equipment out of state

The governor may authorize the use of state equipment outside of this state when he ascertains, and notifies the state auditor in writing, that no other means of transportation is available or no service of the type required is provided by existing common carriers."

In answer to Question No. 1, it is the opinion of this office that the State Constitution, as amended, and Section 41-1103 of the Arizona Revised Statutes, as amended, clearly authorize each legislator to receive \$1800.00 for each regular session of the legislature, payable at the rate of \$200.00 each week for the first nine weeks regardless of the length of the regular session.

In reply to Question No. 2, examination of the State Constitution, as amended, and the Arizona Revised Statutes, as amended, fail to disclose that there is any special length to a regular or special session of the legislature. However, the salary for members of the legislature is limited to \$1800.00, payable at the rate of \$200.00 each week for the first nine weeks, regardless of the length of the regular session.

In answer to Question No. 3, each member of the legislature whose home is outside of the City of Phoenix is entitled to mileage and meals for each day he attends the legislature if he returns home each night, reimbursement for subsistence not to exceed \$9.00 for each twenty-four hour day for each member of the legislature. In the event a member of the legislature resides in Phoenix during such legislative session, he is entitled to subsistence for actual and necessary expenses not to exceed \$9.00 for each twenty-four hour day. Under the provisions of the amendment to the State Constitution and Senate Bill No. 225, it is optional with each member of the legislature, whose home is outside the City of Phoenix, to either return home each night or reside in Phoenix during such legislative session. Replying to Questions 3(a) and 3(b), Art. 4, Pt. 2, Sec. 1, of the State Constitution, Paragraph 2(b), as amended, and A.R.S. § 41-1103(B), as amended, authorize members of the legislature to be reimbursed for travel and other expenses incurred in

Honorable Clarence L. Carpenter, President
Arizona State Senate

January 2, 1959
Page Nine

attendance upon sessions of the legislature or other meetings called by the direction of the presiding officer of either house at the same rate and in the same manner as other public offices, except that such reimbursement shall not be paid members of the legislature whose usual place of residence is within the city limits of the city in which such meetings are held.

The above-quoted sections of the State Constitution and statutes clearly authorize each member of the State Legislature, whose home is out of the City of Phoenix, to be reimbursed for lodging and meals each day he attends the legislature; however, if he returns home each night he shall receive reimbursement for subsistence not to exceed \$9.00 for each twenty-four hour day.

With reference to Question No. 4, A.R.S. § 32-622 requires that travel orders be signed by the head of the department or agency or by whom such authority has been properly delegated. Accordingly, it will be necessary for members of the legislature who return home each night to obtain travel orders from the President of the Senate or the Speaker of the House, unless such authority is properly delegated to some other person prior to incurring such travel expense. The question of whether travel orders should be secured for each day's or each week's travel is one for administrative determination by the President of the Senate and the Speaker of the House in collaboration with the State Auditor.

In reply to Question No. 5, the provisions of Article 2 of Arizona Revised Statutes entitled "Travel expenses" contemplate that travel orders be secured in order to secure reimbursement. There are no provisions in the statute making it mandatory to secure such travel orders on a daily basis. It is accordingly the opinion of this office that such travel orders may be issued either on a daily or weekly basis and is one for administrative determination.

With reference to Question No. 6, our State Constitution and statutes charge the head of each department or agency with the administrative duty of supervising the expenditure of state funds. It is accordingly the opinion of this office that all such expenses should be approved by the President of the Senate or the Speaker of the House before filing them with the auditor.

With reference to Question No. 7, the Arizona State Constitution, as amended, and the provisions of A.R.S. § 41-1103, when considered in connection with Art. 4, Pt. 2, § 1, par. 2(b), of Arizona Revised Statutes, clearly authorize members of the legislature to receive mileage for trips both ways while traveling on legislative business.

With reference to Question No. 8, the State Constitution and statutes contain no provisions authorizing government officials to claim dual travel and subsistence allowance covering the same period

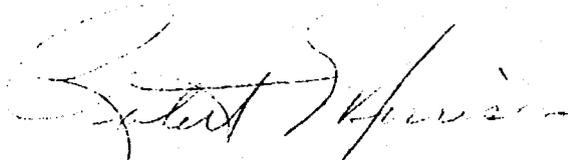
Honorable Clarence L. Carpenter, President
Arizona State Senate

January 2, 1959
Page Ten

of time. The statute limits reimbursement for subsistence and lodging within the state to \$9.00 for each twenty-four hour day and to \$12.00 without the state for each twenty-four hour day. It is accordingly the opinion of this office that such member may be authorized travel allowance and subsistence for meals while traveling on legislative business as well as subsistence for lodging in Phoenix, providing subsistence for lodging is not claimed for the same period at a point outside the city limits of Phoenix within the statutory limitation. An out-of-town member cannot claim subsistence for lodging outside the City of Phoenix during the same period that he claims subsistence for lodging in Phoenix.

The rather lengthy quotes contained in this opinion are considered essential in view of the fact that the questions submitted by the Arizona State Legislature are ones of first impression based upon the amendment to the State Constitution of September 9, 1958, and Senate Bill No. 225, approved March 18, 1958, adopting by reference these statutes authorizing travel expenses for members of the State Legislature in the same manner as for other public officers with the exceptions above noted.

The conclusions of the Department of Law to the above questions are based upon a careful examination of the Arizona State Constitution and current applicable statutes above quoted.



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The Attorney General