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September 17, 1959
Opinion No. 59-142

REQUESTED BY: State Auditor

OPINION BY: WADE CHURCH, The Attorney General

QUESTIONS:

1. May employees of the State Banking Department claim mileage from the state office to various banks and financial institutions within the city limits of the City of Phoenix?
2. A. May members of the Apprenticeship Council residing in Phoenix claim travel expenses, mileage and meals for attending a council meeting held in Phoenix?
B. May members residing in other Arizona cities claim travel expenses to board meetings?
3. A. May members of the Oil and Gas Conservation Commission claim travel expenses for attending board meetings?
B. Are members residing within the city limits of Phoenix entitled to mileage and meals when attending such meetings?

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CONCLUSIONS:

1. Yes.
- 2.A.Yes.
B.Yes.
- 3.A.Yes.
B.Yes.

In considering the above questions, we turn first to the general statute for reimbursement of expenses for public offices, to wit, A.R.S. § 38-621:

"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."

We call attention to that particular phrase "away from his designated post of duty". From this it is clear the Legislature intended to reimburse those public officials who, in order to perform the duties of their job away from their designated post of duty, incurred travel and other necessary expenses. The method and measure of payment is set out in the subsequent statutes § 38-622 through § 38-626. The Legislature was careful to say "when away from his designated post of duty". Obviously it was not intended that a public official or an employee be paid for going to and from his place of employment. Austin v. Barrett 41 Ariz. 138, 16 P.2d 12; Thompson v. Frohmiller 56 Ariz. 313, 107 P.2d 375.

In applying this statute to Question No. 1, we must consider the nature of the duties of the Superintendent of Banks and his deputy examiners. It is noted that the state maintains an office for the Superintendent of Banks to carry on his regular duties but in addition the Superintendent through his deputies and employees is obliged to conduct investigations outside of the office. See A.R.S. § 6-122 (b). Therefore, it follows that such deputy examiners, when carrying on these duties away from the office, would be entitled to reimbursement for necessary travel expenses as prescribed by law.

In the application of this statute to the second question, we quote from Thompson v. Frohmiller, supra:

"* * * (U)nless the legislature has expressly and explicitly included in the expenses to be allowed such officers the cost of travel from their homes to the places where their regular duties are to be performed, such expenses are not a legitimate public charge.* *"

In the matter at hand, there is such a statute, to wit, A.R.S.

§ 23-222:

* * * * *

"C. Members of the apprenticeship council not otherwise compensated by public monies shall receive ten dollars per day while attending meetings of the council for not exceeding four meetings in any fiscal year, or while performing necessary duties authorized by the council, and reimbursement as prescribed by law for state officers for expenses incurred in the performance of such duties.* * *"

This statute is not unlike the many special statutes that have been enacted which create boards and commissions in the state. These statutes specifically authorize reimbursement for the necessary expenses incurred by the members in conducting the business of the board or commission, including that of attending meetings.

However, to answer the specific question of the reimbursement available to a member of such board or commission, it is necessary to examine each special statute concerning the particular board or commission in question to determine the authorization thereunder. In this particular statute, supra, it is noted that the two phrases "while attending meetings of the council***" or "while performing necessary duties authorized by the council" are linked together by the phrase "such duties" following the clause authorizing reimbursement. Thus, giving full weight to each word and phrase of

the statute, the Legislature has specifically authorized reimbursement for necessary expenses for the members of the Apprenticeship Council both while attending meetings and in carrying on other duties of the council. The method and measure of such reimbursement being "as prescribed by law for state officials". There is no limitation in this statute or, generally speaking, in any of the statutes as to whether such member must live in or out of the city limits of Phoenix in order to be entitled to reimbursement and, therefore, any such limitation imposed would be arbitrary. The determining question would be whether such expenses were necessarily incurred as considered in the confines of the duties such member must perform under the statute.

Applying the same reasoning to the question concerning the members of the Oil and Gas Commission, we refer to A.R.S. §27-514 (D):

* * * * *

"D. Appointive members of the commission shall receive a salary of twenty-five dollars per day for each day actually spent in the performance of official duties, together with reimbursement for travel and other necessary expenses incurred in the performance of official duties as provided by law for other state officers."

Here again we have the specific statutory authorization for reimbursement for necessary expenses incurred in performing the duties of the office, among which is that of attending meetings which may be in Phoenix or any other place set by the commission, there being no designated post of duty. The method and measure of payment is again governed by the general statutes in Title 38, 59-142

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supra, with special authorization for payment made by § 27-514 (D), cited supra.

If the Legislature had not intended that reimbursement be made to these members under particular circumstances where other public officials would not have been reimbursed, this special statute would not have been necessary and such members would have been reimbursed only in the manner of other public officials.

Therefore, the logical conclusion is that the special statute authorizes the payment of travel and other necessary expenses incurred in the performance of official duties including attendance of meetings.

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