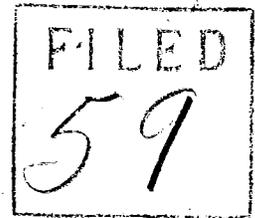


PUBLIC OFFICERS: Right to reimbursement for travel expense necessarily incurred in discharge of official duties.



September 4, 1947

Mr. Hugh I. McSkimming
Division of Collection
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your request of recent date for an official opinion of this office, reading as follows:

"I have been requested to ask of you for an opinion in regards to the following subject:

"This department maintains an office in St. Louis employing four (4) people which handle the major portion of all business done by this department, including the checking of barge terminals up and down the Mississippi.

"Naturally I have occasions to be in St. Louis and use hotels whenever necessary - the same as I use in Kansas City or St. Joseph. The comptroller advises he can not honor any receipt for expenses from St. Louis, as I am a registered voter in that city, although I claim my home is here in Jefferson City and establish a legal residence wherever I please.

"I realize he is being guided by the law, which says the State shall not pay an employee while he is in his own home town, but I am trying to claim that my case is somewhat different, as I have no home in St. Louis and I must be there more so than any other town, and I think it is an injustice that I should have to pay my own expense while there on State business.

We are cognizant of the fact that the position which you hold is that of Administrator of the Motor Vehicle Fuel Tax Law of the State of Missouri within the Division of Collection.

The duties which you discharge in connection with the administration of the Missouri Motor Vehicle Fuel Tax Act are those previously discharged by the State Inspector of Oils. Such duties were transferred to the Division of Collection of the Department of Revenue, under the provisions of Section 16 of an act found in Laws of 1945, page 1428, as amended by Senate Bill No. 143 of the 64th General Assembly. The duties there imposed relate, in general, to the licensing, inspection and collection of a tax upon certain types of motor vehicle fuels used in the State of Missouri.

Section 20 of Article IV of the Constitution of 1945 requires that the principal offices of all executive and administrative officials and departments shall be maintained at the City of Jefferson. The constitutional provision mentioned reads as follows:

"The executive and administrative officials and departments herein provided for shall establish their principal offices and keep all necessary public records, books and papers at the City of Jefferson."

To the same effect, Section 7 of the act found in Laws of 1945, page 1428, reads as follows:

"The director of revenue and the department of revenue shall be provided by the board of permanent seat of government, or such agency as may hereafter exercise the powers and duties of the board of permanent seat of government, with suitable quarters in the City of Jefferson. The director of revenue shall also establish and maintain permanent branch offices in the cities of St. Louis and Kansas City, and shall have power to select other additional places in the state for special full time or temporary offices."

You will note that this last-quoted statutory enactment also provides for the establishment and maintenance of permanent branch offices in St. Louis and Kansas City and of temporary offices in other locations to be selected by the Director of Revenue. We note from your letter of inquiry that such an office has been established in the City of St. Louis, and that the Comptroller has refused payment of any claim for reimbursement for travel expenses incurred while in that city on official business for the reason that you are a registered voter in the City of St. Louis.

It has long been the rule in Missouri that a public officer who necessarily incurs expense in the discharge of his official duties is entitled to reimbursement therefor. We direct your attention to Ewing v. Vernon County, 216 Mo. 681, wherein the court said, l. c. 695:

"The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

This case, in principle, was followed in Rinehart v. Howell County, 153 S. W. (2d) 381.

Legislative recognition of the right to be reimbursed for necessary travel expense incurred while travelling in the discharge of official duties is evidenced by the incorporation of the following language in the appropriation made for the operation of the Department of Revenue. This appropriation appears in two parts, Sections 3.040 and 3.070 of House Bill No. 172 of the 64th General Assembly. We quote:

"Section 3.040. * * * *

"D. OPERATION:

"General expense: consisting of * * * travel within and without the state, * * * "

"Section 3.070. * * * *

"D. OPERATION:

"General expenses: consisting of * * * travel within and without the state, * * * "

From the foregoing, it appears that funds are available from which such reimbursement may be made. We are unable to

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discern the pertinency of the fact that you are a legal resident of the City of St. Louis, for the reason that by both constitutional and statutory provisions the official headquarters of the department by which you are employed has been designated as the City of Jefferson, and that city thereby has become your "official home."

We do not wish to say by the above, however, that minor employees are to be permitted to receive reimbursement for expenses incurred while living at their homes in cities wherein are located permanent or temporary branch offices of any of the executive departments or officials. Such employees are only entitled to reimbursement when their duties necessarily entail their incurring expense for travel in the discharge of their duties away from the point at which they are regularly assigned to duty.

CONCLUSION

In the premises, we are of the opinion that an administrative employee of an executive department or official whose activities are state-wide in scope, and whose duties necessarily require the expenditure of private funds for travel expense incurred in travel necessary for the discharge of the duties of the office, is entitled to reimbursement therefor. The question of the necessity of such travel and the reasonableness of such expenses so incurred is, of course, a question of fact to be determined in each instance by the officer approving claims against the state treasury.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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