

BOARD OF BARBER EXAMINERS: Allowed expense accounts - under what circumstances.

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HB650 A-c 4 - D - 1924/33  
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July 24, 1933.



Mr. J.D. Hawkins,  
Board of Barber Examiners,  
Webb City, Missouri.

Dear Sir:

We hereby acknowledge your request for an opinion dated July 16, 1933, which is in words and figures as follows, to-wit:

"We believe it would be of very great importance to our profession to be represented at this National Convention, and would very much like to have you rule that we be allowed expenses to this meeting. As it is in another state our expenses would not be allowed unless you so rule. These expenses were allowed last year."

The session laws for Missouri of 1933, page 92, provide:

"Sec. 4. BOARD OF BARBER EXAMINERS. -- There is hereby appropriated out of the state treasury, eighteen thousand dollars (\$18,000.00) chargeable to the state board of barber examiners fund, the following amounts for the purposes herein expressed:

\* \* \* \* \*

D. For Operation. General expense: including communication, printing and binding, traveling expenses and other general expense. And Material and supplies consisting of stationery and office supplies...\$9,450."

Literally construed, that phrase "traveling expenses" might be said to mean that this money so appropriated can be spent by a member of the Board of Barber Examiners as traveling expenses so long as he be going from place to place--traveling. Such is

a literal construction of the phrase in the Appropriation Act, not taking into consideration the Constitution of the State of Missouri nor the law creating the Board of Barber Examiners under which they act.

It will be noted in said appropriation bill that the Legislature did not say in so many words "necessary traveling expenses" or "traveling expenses incurred in performance of public duty", nor did they say "traveling expenses within and without the State of Missouri", all of which phrases have been used in appropriations which were made by the Legislature for the use of other departments of said government in times past.

We must determine what is a legitimate object of expenditure for said money appropriated to the Board of Barber Examiners to be used for "traveling expenses", and since the appropriation act itself recognizes that some traveling expenses are legitimate under the law, we must proceed to examine our State Constitution and the act creating the Barber Board, known as Chapter 103, R.S. of Mo. 1929, which chapter prescribes the duties of the Barber Board. The Legislature under our State Constitution (Article IV, Sec. 48) could not appropriate public money to pay such expenses as described in your request in the absence of a statute authorizing either actually or by implication such attendance of the convention by members of the Board. I quote Article IV, Sec. 48 of the Missouri Constitution:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

Sec. 13525, Chapter 103, R.S. of Mo. 1929 provides in part as follows:

"The remuneration of each member shall not exceed the sum of five dollars per day while engaged in their duties as such, exclusive of the necessary traveling and other expenses, to which they shall also be entitled: \*\*\*\*\*The State Auditor is hereby directed to issue his warrants monthly, upon the State Treasurer out of this fund only for the payment of the salaries, office and all other necessary expenses of said board. \*\*\*\*\*"

Sec. 13526 of Chapter 103 provides in part as follows:

"Such board shall hold public examinations at least four times in each year, at such times and places as it may deem advisable. \*\*\*\*\*"

Sec. 13534 of Chapter 103 provides in part as follows:

"Any person practicing the occupation of barber without having obtained a certificate of registration or permit as provided in this chapter, or willfully employing a barber who has not such certificate or permit managing or conducting a barber school or college, without first securing a permit from such board, or falsely pretending to be qualified to practice as a barber or instructor or teacher of such occupation under this chapter, or failing to keep the certificate, card or permit mentioned in this chapter properly displayed, or for any extortion or overcharge practiced, and any barber college, firm corporation or person operating or conducting a barber college without first having secured the permit provided for by this chapter, or failing to comply with such sanitary rules as the board, in conjunction with the state board of health, prescribes, or for the violation of any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and the board shall proceed against all such persons, \*\*\*\*\*"

The authority to travel at the expense of the state must be found in some statute, otherwise, there is a constitutional prohibition on the state forbidding payment of the expense incurred thereby. Do the portions of Chapter 103 above quoted prescribe such statutory duties on the Board of Barber Examiners as they may in the fulfillment thereof necessitate incurring expenses in attending the National Convention of State Boards of Barber Examiners? We must take the law as we find it.

It will be observed after a careful reading of Chapter 103 that there is nowhere conferred upon members of said Board by any provision of the Act, at least so far as we have been able to discover, any authority to incur expense for travel in the performance of any other duty than those duties above recited; manifestly, none of those duties require the attendance at said

(Mr. J.D. Hawkins)

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convention, and none of those duties, either express or by implication, require any travel except in the State of Missouri.

It is the opinion of this office that such a charge for traveling expenses is not a proper charge against the State of Missouri because it could not be interpreted under a most strained construction of the law to be a necessary traveling expense within the State of Missouri made in line of any official duty prescribed in the statutes.

Respectfully submitted,

WM. ORR SAWYERS,  
Assistant Attorney General

APPROVED:

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Attorney General