

BUILDING & LOAN; Supervisor must fix maximum for board and lodging; examiners exempt from provisions of the statute and are allowed maintenance while at headquarters if given to them by supervisor.

March 11, 1937.



Honorable J. W. McCammon
Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

This is to acknowledge your letter dated March 9, 1937, as follows:

"This is to request a ruling from your department relative to allowing examiners of the Bureau of Building and Loan Supervision \$1.00 per diem allowance while working on home base.

"It has been the policy of the previous administration to allow the examiners \$1.00 for expenses while on home territory and we would like to have your opinion as to the legality of such an allowance."

Section 5580, Laws of Missouri, 1931, page 143, reads in part as follows:

"The supervisor of building and loan associations, with the approval of the governor shall appoint such assistants including not to exceed nine examiners, * * *. All employees of the bureau of building and loan supervision shall perform such duties as shall be required * * *, shall devote all of their time to their official duties, * * *"

Section 5583, Laws of Missouri, 1931, page 144, reads in part as follows:

"* * * The examiners shall each receive a salary to be fixed by the supervisor of building and loan associations, but in no case to exceed the annual sum of Twenty-four Hundred Dollars (\$2,400.00) for each of such other examiners. * * * In addition thereto the actual and necessary traveling and other departmental or office expenses of the supervisor of building and loan associations, the examiners, and other assistants herein provided for, shall be paid out of the state treasury upon vouchers approved and audited by the supervisor * * *, with warrants drawn on the treasurer by the state auditor on the building and loan supervision fund."

We thus start with the premise that examiners may be appointed by the supervisor, with the approval of the governor, not to exceed nine in number, and that said examiners shall receive a salary of not to exceed \$2400.00 per annum. Necessary and actual traveling and other expenses may be paid to the examiners when rendering service to the department or on official business.

Section 5583, supra, in no uncertain terms fixes the salary. The allowing of traveling expenses is not salary. You state that the examiners have been allowed by your predecessor \$1.00 per diem and if said allowance was not for traveling expenses, then it could only be a subterfuge for increasing the salary of the examiners, and such is prohibited. Examiners are entitled to traveling expenses when performing official duties.

Section 11405, R. S. Mo. 11405, R. S. Mo. 1929, relates to official travel and provides that before a person travels that such shall receive the authority therefor from the head of the department. Paragraph "(b)" of said section

provides in part as follows:

"This written authority shall state the maximum amount per diem that may be expended for board and lodging. The head of the department shall fix this amount at a just and reasonable figure based upon the duties of the person traveling and the nature of the duties to be performed * * *"

Paragraph "(c)" prescribes a form that must be filled out and sworn to, and provides in part as follows:

"Before any payment or reimbursement is made to any person on account of any traveling expenses, the original written authority provided herein shall be filed with the state auditor. * * * The form shall contain the following information and in addition such other information as the state auditor may deem necessary and shall be uniform for all departments: Date and place expense was incurred. If account is for more than one day, it shall be itemized showing the amount of each day's expenses and the purpose for which each day's expense was incurred. Transportation charge, sleeping-car fare, lodging and meals shall each be shown as separate items and the amount for each stated. * * *"

Examiners when traveling, in order to perform the official duties of their employments, should receive reimbursement for actual expenses. That is to say, the supervisor of the bureau of building and loan supervision must authorize, in writing, the examiners to travel at public expense and the supervisor must also state the maximum amount that may be expended for board and lodging per day. Section 11405, supra, means actual expenses, with the right given to the head of the department to set the maximum as to board and lodging. Railroad fare or transportation would be turned in at the actual cost. Each day's expense would be separate and distinct.

Section 11406, R. S. Mo. 1929, reads in part as follows:

"Every employee or official of the State of Missouri, who is on a regular salary or per diem, shall have a designated place as headquarters and no such official or employee shall be entitled to, or receive, any compensation or reimbursement for subsistence expense (meals or lodging) while at headquarters. Provided, that the heads of all departments in charge of statewide activities shall have headquarters at Jefferson City, unless otherwise provided by general laws, or unless, in the opinion of the governor, or the elective officer appointing the official or employee, the public interest will best be served by having the headquarters at some other place, to be designated by the governor, or the elective officer appointing such official or employee * * Provided further, this section shall not apply to inspectors and examiners whose duties are in no respect administrative but wholly that of inspection and examination."

Thus, while Section 11406, supra, prohibits the paying of subsistence to any employe or official on a regular salary or per diem, while at headquarters, and that such employes or officials shall have Jefferson City designated as headquarters, unless otherwise designated by the governor or elective state officials, yet, examiners are exempt from the provisions of Section 11406. Thus, Section 11406 would not be a bar to the examiners receiving subsistence while at headquarters and such could have their headquarters other than at Jefferson City. However, Section 11405, R. S. Mo. 1929, provides that in the oath that a person takes when submitting an expense account that "the expense was necessary to the public business of the state" and "the above claim is correct and just."

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It is our opinion that the Supervisor of the Bureau of Building and Loan Supervision may allow examiners, while at headquarters, expenses for traveling and for board and lodging and place the maximum allowed if the examiners expend such money while in the performance of official duty, and that the expending of the travel was necessary to the public business of the state. It is our further opinion that the flat allowance of \$1.00 per diem for expenses while at headquarters would be unwarranted, unauthorized, and illegal as such. However, if you as Supervisor allow the maximum of \$1.00 to examiners while at headquarters, if such amount is spent by them and itemized, then the paying of that sum for reimbursement to the examiners while at headquarters, would be legal and within your authority. You will understand that the allowing of a flat \$1.00 per diem would be merely a subterfuge to increase the salary of the examiner, and the salary is fixed definitely, at not to exceed \$2400.00 per annum.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

JLH:EG