

ST. LOUIS BOARD OF ELECTION COMMISSIONERS -- No authority to provide meals for employees during overtime work.

September 10, 1938

Mr. Richard D. Hatton
Chief Clerk
Board of Election Comm.
208 South 12th Blvd.
St. Louis, Missouri



Dear Sir:

We have your request of September 6, 1938 for an opinion, which request reads as follows:

"By order of the Board, there is sent to you the following:

- " 1. Copy of voucher, made payable to Richard D. Hatton, in the amount of \$73.00, for expenses incurred on account of meals because of night and Sunday work since and during the set-up of the new Permanent Registration Law;
- " 2. Copy of voucher made payable to George J. Hug, in the amount of \$73.00, for like expenses;
- " 3. Copy of letter dated September 2nd, from the Deputy Comptroller, to which is attached copy of an opinion dated September 1st from the City Counselor.

"The Board's position in certifying these two vouchers for payment to the Comptroller was and is that they are for legitimate expenses incurred by order of the Board in the conduct of registrations and elections held especially under the new Permanent Registration Act, since December 1, 1937; on the sixty-eight

nights and five Sundays, the Board required its Chief Assistant and Assistant Hug to be present almost continually to supervise the office staff in handling the registrations and in the preparation of the records incidental to the setting up of the new Permanent Registration system. The Board is not attempting to increase the salaries of these employees, as it recognizes the salary provisions of the Act, but feels its legal obligation to reimburse them for their out-of-pocket expense for meals on the nights and Sundays in question just as any other business establishment does when it asks its salaried employees for continuous work.

"In view of the present stand of the Comptroller, the Board asks your opinion (a) by what authority in law is the Comptroller withholding payment of these amounts; (b) with no thought of being arbitrary, is it not the duty as well as the legal requirement of the Board to decide what are and what are not legitimate registration and election costs and expenses and to take such action in connection with expenses as in its judgment will save the taxpayers money in the long run; and (c) what is your interpretation of Section 85, particularly does the word 'claims' cover all items of registration and election costs and expenses?"

It appears that the vouchers in the amount of \$73.00 were issued to employees on account of "meals, because of night work and Sundays" for the period of December, 1937 to August, 1938. The general rule as to the payment of expenses for public officers is found in 46 C. J., p. 1018, Sec. 246, in the following language:

"But where the law requires an officer to do that which necessitates an expenditure of money for which no provision is made to supply him with cash in hand, he may make the expenditure out of his own funds and have reimbursement therefor, and where

a public duty is demanded of an officer without provision for any compensation, the expense must be borne by the public for whose benefit it is done."

This rule has been consistently followed in Missouri. County of Boone vs. Todd, 3 Mo. 140; Hark Reader vs. Vernon County, 216 Mo. 696; Buchanan vs. Ralls County, 283 Mo. 10, 222 S. W. 1002.

We have been unable to find any authority which classifies meals as a necessary expense of a public office. The mere fact that employees or officers may work overtime does not give rise to any rule requiring the state to furnish them meals. It is a matter of common knowledge that most of the state officers and many of their appointees now and for a number of years, have worked at nights, during holidays and Sundays, yet there is no provision for paying them additional compensation or for furnishing them meals during such periods of overtime.

The business of the state is not conducted upon the same basis in all details as that of a private business. It is a well established rule in this state that public officers are presumed to render their services gratuitously unless there is some specific statutory provision made, authorizing payment for such services. King vs. Riverland Levy District, 279 S. W. 195. No such rule prevails with reference to the conducting of private business.

Section 85 of the registration law, Laws 1937, p. 277, provides that the Board shall audit all claims. This section merely imposes upon the Board the first duty to examine the legality of claims presented to the Board for payment. This same power to audit claims is vested in the State Auditor with reference to certain accounts. Section 11404, R. S. Mo. 1929. Yet it is the duty of the Auditor to deny and refuse payments for accounts which are not authorized by law. State ex rel. vs. Thompson, 293 S. W. 391, 316 Mo. 1169.

Meals have never been classified as a necessary office expense, and can only be paid for when specifically authorized by statute. It is true that meals are essential to the welfare of the individual, the same as the extraction

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of an infected tooth or the removal of infected portions of the body by the application of modern surgery. Yet, these are essentials for the welfare of the individual and are not necessities for the conduct of a public office. We have carefully examined the opinion issued September 1, 1938 to the Honorable Edgar H. Wayman, City Counselor of St. Louis City, and this office is in accord with the conclusions reached in that opinion.

It is, therefore, the opinion of this office that the expense items of \$73.00 for meals because of night work and overtime work, cannot be allowed, lacking specific authority for the payment of same.

Respectfully submitted

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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