

GENERAL ASSEMBLY:  
HOUSE OF REPRESENTATIVES:  
OFFICERS:  
FEES, COMPENSATION AND  
SALARIES:

- (1) House Resolution No. 30 is a directory provision and compliance is not mandatory.
- (2) Reimbursement to Legislator for expenses not justified by mere certification as to presence.



May 1, 1953

Honorable William Pittman  
Representative, DeKalb County  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Pittman:

In your letter of recent date, you requested an official opinion on the following questions:

" \* \* \* \* \*

"1. Are members of the General Assembly required to report their actual expenses to any officer in this state and if so, what officer, and by what authority?

"2. Assuming that the officers mentioned in the constitutional provision certify as to the presence of a given member of the General Assembly and nothing more, what is to happen?"

Reimbursement to legislators for actual and necessary expenses incurred was authorized by Article III, Section 16a of the Missouri Constitution of 1945, adopted November 7, 1952, as follows:

"Each senator or representative shall be reimbursed from the state treasury for the actual and necessary expenses incurred by him in attending sessions of the General Assembly and which do not exceed the sum of ten dollars (\$10.00) per day for each day on which the first roll call, following the opening prayer, in the Journal of the Senate or House respectively shows the presence

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of such senator or representative. Upon certification by the president and secretary of the Senate and by the speaker and chief clerk of the House of Representatives as to the respective members thereof, the state comptroller shall approve and the state treasurer shall pay monthly such expense allowance without legislative enactment. No such reimbursement shall be paid to any senator or representative for any day of a regular session after May 31 following the convening of the General Assembly in regular session on the first Wednesday after the first day of January following each general election, nor for any day after the sixtieth calendar day following the date of its convening in special session. Adopted general election November 4, 1952."

The Legislature may enact such legislation as will implement and facilitate operation or prescribe a practice for enforcement of a constitutional provision even though it be self-enforcing according to State ex rel. Randolph County vs. Walden, 357 Mo. 167, l.c. 177, which states as follows:

"\* \* \* Such legislation may be enacted as will facilitate operation, prescribe a practice to be used for enforcement, provide a convenient remedy for the protection of the right secured or the determination thereof, or place reasonable safeguards around the exercise of the right. \* \* \*."

The Missouri General Assembly has not so acted, but by House Resolution No. 30, found on page 149 of the Journal of the House of Representatives, provision was made to facilitate payment of incurred actual and necessary expenses as follows:

"BE IT RESOLVED, that, in order to comply with the provisions of Constitutional Amendment No. 1 adopted on November 7, 1952, each member of the House of Representatives of the Sixty-Seventh General

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Assembly of the State of Missouri certify to the Speaker and Chief Clerk of the House, at the conclusion of each calendar month during the session of the Legislature, that he or she has incurred actual and necessary expenses on each day on which he or she answered the first roll call of the House following the opening prayer in excess of ten dollars, or such amount as is actually and necessarily incurred if less than ten dollars, and that the Speaker and Chief Clerk of the House make such certification as is required by said Constitutional Amendment."

While a House Resolution is not a statute for lack of the necessary requisites, and cannot be given the effect of law, nevertheless it may be binding upon the members of the House since the Missouri Constitution of 1945, Article III, Section 18, gives the Legislature power to make rules for its own proceedings.

In order to determine the efficacy of the above Resolution it is necessary to determine whether the provisions of the Resolution are directory or mandatory. Nowhere in said Resolution does the word "shall" appear.

In the case of *State ex inf. Attorney General ex rel. Lincoln vs. Bird*, 295 Mo. 344, 1.c. 351, 244 S.W. 938, it was said in deciding whether a statute was mandatory or directory:

"\* \* \* this construction may be sustained in that if a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. The rule thus stated is in harmony with that other well-recognized canon that statutes directing the mode of proceedings by public officers are to be held to be directory and are not to be regarded as essential to the validity of a proceeding unless it be so declared by the law. \* \* \*."

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Also, in the case of Granite Bituminous Paving Co. vs. McManus, 129 S.W. 448, 144 Mo. App. 593, l.c. 607:

"\* \* \* If no substantial rights depend upon it and no injury can result from ignoring it, and the purpose of the Legislature can be accomplished in a manner other than as prescribed therein and substantially the same results obtained, then the statute will generally be regarded as directory. \* \* \*."

Therefore, the provisions of the said Resolution should be construed as directory only to facilitate reimbursement of legislators and not restrictive in the sense that payment cannot be had by other means.

In answer to your second question, it is noted that Section 33.010, RSMo 1949, provides for appointment of a Comptroller who shall head the Division of Budget and Comptroller.

Section 33.030, RSMo 1949, is quoted, in part, as follows:

"The division of the budget and comptroller shall have the power and its duties shall be:

\* \* \* \* \*

"(3) To preapprove all claims and accounts and certify them to the state auditor for payment. As a prerequisite to his preapproval of claims and accounts, the comptroller shall ascertain that such claims and accounts are regular and correct. Each such certification from the comptroller to the state auditor shall be accompanied by a copy of the invoice."

(Underscoring ours.)

If the Comptroller is merely notified of the presence of a certain legislator he would not be justified in approving reimbursement for a legislator for "the actual and necessary expenses incurred", unless a claim were

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made to him, and there is some basis upon which to "ascertain that such claims and accounts are regular and correct." Nor must the Comptroller automatically approve a claim, even though submitted in the manner prescribed by the House Resolution previously discussed, since such Resolution can have no binding effect on anyone but the House and its members.

CONCLUSION

It is, therefore, the opinion of this office that:

1) Members of the House of Representatives of the 67th General Assembly are not required to certify their expenses in compliance with House Resolution No. 30;

2) However, reimbursement to legislators under Article III, Section 16a, Missouri Constitution of 1945, as adopted on November 7, 1952, upon mere certification of presence of legislators is not justified. There must be a claim by each legislator for his actual and necessary expenses incurred, either directly to the Comptroller, or (by House members) to the Comptroller through the Speaker and Chief Clerk of the House, in accordance with House Resolution No. 30. The Comptroller may require such proof as is reasonably necessary to establish the correctness of the claim before he approves it.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON  
Attorney General

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