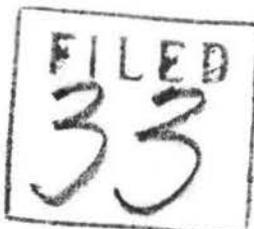


LEGISLATURE:  
OFFICERS:  
TRAVEL EXPENSES:  
LEGISLATIVE RESEARCH COMMITTEE:  
COMMITTEES:  
COUNCIL OF STATE GOVERNMENTS:

Members of the Committee on Legislative Research who were authorized by the Committee to represent the Committee at meetings of the National Legislative Conference in Miami, Florida, in 1955, and in Seattle, Washington, in 1956, could be legally reimbursed, from funds appropriated for the use of the Committee, for expenses necessarily incurred by them in attending such meetings.



January 24, 1957

Honorable Floyd R. Gibson  
Senator, Eighth District  
State Capitol Building  
Jefferson City, Missouri

Dear Senator Gibson:

This refers to your request for an opinion with respect to reimbursement of expenses incurred by certain members of the Committee on Legislative Research on trips to Miami, Florida, in 1955, and to Seattle, Washington, in 1956.

The question presented is as follows: Could those members of the Committee on Legislative Research who were authorized by the Committee to represent the Committee at meetings of the National Legislative Conference in Miami, Florida, and Seattle, Washington, be legally reimbursed from funds appropriated for the use of the Committee, for expenses necessarily incurred by them in attending such meetings.

In answering this question, consideration must be given to three matters: (1) Was attendance at the meetings in question authorized by law? (2) Is there any prohibition, in the state constitution or statutes, against the reimbursement of members of the Committee for such expenses? (3) Were funds appropriated for the Committee which may be used for reimbursement of such expenses, assuming reimbursement is otherwise proper?

In order for the expenses to be paid, attendance at the meetings in question must be authorized by statute, either expressly or by implication. State ex rel. Lamkin v. Hackmann, 275 Mo. 47, 204 SW 513; State ex rel. Bybee v. Hackmann, 276 Mo. 110, 207 SW 64; State ex rel. Bradshaw v. Hackmann, 276 Mo. 600, 208 SW 445. In the Bybee case, quoted with approval in the Bradshaw case, the court, in considering the question of whether a stenographer employed by the State Board of Equalization should be paid, stated the general rule as follows:

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" \* \* \* Has the State Board of Equalization authority under the law to employ a stenographer at the expense of the State? If such Board of Equalization \* \* \* has any such authority, this authority must be bottomed on some statute. For it is fundamental that no officer in this State can pay out the money of the State except pursuant to statutory authority authorizing and warranting such payment. \* \* \* But it is also well settled, if not fundamental law, that whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual, is conferred by implication. \* \* \*"

In considering whether attendance at the meetings was authorized by law, let us look first at the nature of the meetings and then at the duties and powers of the Committee.

The meetings were the annual meetings of the National Legislative Conference, which is one of the organizations within the framework of the Council of State Governments. Its purpose has been briefly stated as follows: "To cooperate for more effective service to the legislatures and to aid in improving legislative procedures." (The Book of the States, 1956-7, p. 12.) It is understood that originally the conference included persons from the various states regularly engaged in legislative research, bill drafting, revision of statutes, operation of legislative libraries, and related activities; that more recently it has been expanded to include legislators responsible for the supervision of such activities and persons holding positions similar to those of the Chief Clerk of the House and Secretary of the Senate in Missouri; that some forty-one states were represented at the Seattle meeting and there was comparable representation at the Miami meeting; that the meetings are "workshop meetings" in which persons primarily concerned with particular phases of legislative activity meet in groups to consider matters in connection with their own work and, in addition, meetings of all persons attending are held to correlate the work of such groups and consider matters of common interest; and that, in general, the purposes of the meetings are to study problems arising in connection with legislative activities such as are mentioned above, to interchange information concerning the experience of the various states in these fields, develop improved methods and procedures, and to promote cooperation between persons who are responsible for this work in the various states.

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The duties and powers of the Committee on Legislative Research, which are set forth in Chapters 23 and 3, RSMo 1949, are extensive and stated in broad terms. They include, among other things, maintenance of a research and reference service on legislative problems, maintenance of a bill drafting service, supervision of the revision of statutes, and various investigatory functions.

For the purposes of this opinion, attention is directed specifically to the following provisions of Section 23.020, RSMo 1949:

"The committee here created shall perform the following services for the members of the general assembly:

\* \* \* \* \*

"(2) Upon written request, make such investigation into legislative and governmental institutions of this state or other states as would aid the general assembly."

(Parenthetically, it is believed that, considering substance instead of form, the words "Upon written request" in the foregoing quotation, for our purposes, may be disregarded and that the Committee, which is composed of members of the General Assembly, may do on its own initiative that which would be its duty upon written request by a member of the Assembly.)

Attention also is directed to the following provisions of Section 23.050, RSMo 1949:

"The committee is empowered to obtain information upon the needs, organization, functioning, efficiency, and financial status of any department of state government or of any institution or agency which is supported in whole or in part by revenue of the state; to collect, and assemble information \* \* \* upon questions of state-wide interest which may reasonably become subjects of legislative action or of legislative consideration; \* \* \*."

Again, in Section 23.050, there is the following with respect to the biennial report which the Committee is to make to the General Assembly:

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" \* \* \* Such report shall include any recommendations which the committee may have for legislative action as well as any recommendations which the committee may desire to make concerning the efficient and economical operation of the state government."

It also is pertinent that in Chapter 16, RSMo 1949, relating to the Commission on Interstate Cooperation, the Council of State Governments is declared to be a joint governmental agency of this state and other states, and the functions of the Commission are so stated as to express a policy, and to recognize the value, of full participation by legislative, executive, and judicial officials and employees of this state in the work of the Council of State Governments and the development and maintenance of contacts between them and those of other states through correspondence, conferences, and otherwise.

While there is nothing in the statutes which specifically authorizes attendance by members of the Committee on Legislative Research, or of its staff, at meetings such as are now in question, it is believed that, by implication, there is ample authority for sending representatives of the Committee to meetings of this nature.

To find such authority, one does not have to look beyond the provisions of Section 23.020, RSMo 1949, quoted above, with respect to "investigation into legislative \* \* \* institutions of this state or other states." Certainly, one of the most efficient and effective means by which to investigate legislative institutions in other states is through the personal interchange of information concerning such institutions at meetings planned for that purpose and attended by persons actively engaged in legislative work in a great majority of the states. Correspondence, telephone calls, study of laws of other states, all serve a purpose; but the meetings provide a means of obtaining information more quickly, and they can give those attending the meetings a far clearer understanding of the real facts and current developments in other states than can be obtained in any other manner.

In addition, the powers and duties of the Committee set forth in the provisions of Section 23.050, RSMo 1949, quoted above, provide a basis for authority for representation of the Committee at such meetings. For example, information from other states may have a decided bearing upon the needs and efficiency of our state departments and agencies, which the Committee is empowered to investigate; and, likewise, it should be considered in determining what recommendations for legislative action, if

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any, should be made in the Committee's reports. And, although the meetings in question are concerned primarily with special phases of legislative activity, the comments in the preceding paragraph concerning the usefulness of such meetings in obtaining information are applicable here.

It is understood that prior to 1955 the Committee had been represented for some years at meetings of the National Legislative Conference by members of its staff, without any question being raised by anyone concerning the authority of the Committee to be so represented; and such administrative interpretation of the law is entitled to some weight. In so far as authority for attendance at the meetings is concerned, there is no basis for distinction between members of the Committee and members of its staff; the authority in both instances must be found in the same statutory provisions. Since the ultimate responsibility for the work of the Committee rests with the members of the Committee, and their point of view may well be different from that of the staff members, there would appear to be at least equal reason for Committee members to attend the meetings as there is for staff members to do so.

The decision whether the Committee should be represented at a particular meeting (and, if so, by whom) calls for the exercise of a considerable degree of discretion, and it is readily understandable that there may be differences of opinion. However, someone must have the authority to decide, and we believe that that authority necessarily is vested in the Committee. In connection with the two meetings under consideration, the Committee exercised its authority by duly adopted resolutions authorizing certain persons to attend the meetings, and the legality of such action cannot properly be questioned merely because someone else might have reached different decisions.

The conclusions reached above are fully supported by the decision in *State ex rel. Lamkin v. Hackmann*, 275 Mo. 47, 204 SW 513, in which the court held that the State Superintendent of Schools was entitled to reimbursement for expenses incurred in travel to a National Education Association convention outside the state solely because of his duty "to in every way elevate the standard and efficiency of the instruction given in the public schools of the State." In that case, the court stated, l.c. 56-57:

" \* \* \* This is a broad and comprehensive duty, and in fulfilling it, of necessity much is left to the discretion of the Superintendent. It is difficult to see how it is to be complied with unless the officer

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whose official duty it is to elevate standards and efficiency shall have an opportunity to ascertain what standards and efficiency have been attained by teachers and educators in other states of the Union. \* \* \* It is, we think, necessary if standards and efficiency in education in this State are to be kept abreast of the progress in other States, that the head of the public school system should be advised as to what educators elsewhere are doing. No better way perhaps for doing this has been devised than by conventions and conferences of the leaders in educational progress. That it is possible for the privilege of attending such conventions at the expense of the State to be abused is no argument in favor of entirely cutting off the necessary privilege. If it is proper and necessary to attend these conferences, some one must be vested by law with the authority of deciding upon the expediency of it. We think the question of the necessity and expediency of incurring the expense in issue for the purpose mentioned has been by the statute conferred on the Superintendent of Schools, and not upon the State Auditor. If the privilege be abused the people exercising their political power can correct the abuse at the polls. Obviously we are not holding that if the expenses incurred were for travel which, patently, had no relevancy to the Superintendent's statutory duties that the Auditor would be bound to audit them, merely because the Superintendent had approved them. That situation is not presented by the record before us."

We turn now to the question whether reimbursement of expenses incurred by Committee members in attending the meetings is prohibited by the state constitution or statutes. With respect to members of the Committee, the Constitution, Art. III, Sec. 35, provides:

" \* \* \* The members of the Committee shall receive no compensation in addition to their salary as members of the general assembly, but may receive their necessary expenses while attending the meetings of the committee."

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Also, with respect to members of the Committee, Section 23.070, RSMo 1949, provides as follows:

" \* \* \* The regular meeting place of the committee shall be in Jefferson City, Missouri, and after its inception and organization it shall regularly meet at least once every three months. A majority of the members of the committee shall constitute a quorum and its membership shall serve without compensation, but shall be entitled to mileage and necessary expenses incurred while attending any meetings of the committee within the state. Special meetings of the committee may be called at such time and place within the state as the chairman thereof may so designate; provided, no member shall receive for such expenses more than two hundred and fifty dollars for any period of two calendar years."

It should be noted at the outset that we are not concerned here with expenses incurred by members of the Committee in attending Committee meetings; Committee meetings were not held in Miami and Seattle. Hence, the provisions of statute just quoted which purport to limit the place of meetings to "within the state" and to prescribe a \$250 limitation upon expenses in attending Committee meetings are not material to the present issues.

As indicated by an exhaustive annotation in 5 A.L.R. 1182, there is a marked conflict in the court decisions concerning the effect of constitutional provisions which fix or limit the compensation, emoluments, perquisites, etc., of public officers. In numerous decisions, the courts, applying the doctrine "expressio unius est exclusio alterius," have held that, where the constitution prescribes a salary or per diem, or a salary or per diem and mileage, for members of the Legislature, statutes allowing reimbursement for expenses incurred for living costs while attending

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sessions of the Legislature are unconstitutional. Other courts have taken a contrary view on this and related questions; but one thing that the courts do agree upon is that there is a distinction between personal expenses, such as are mentioned in the preceding sentence, and legislative or official expenses, and that the latter may be paid. The theory apparently is that, even though the doctrine "expressio unius est exclusio alterius" is followed, the mention of compensation or compensation and one form of personal expense, while excluding other compensation or personal expense, does not exclude a different kind of expense, namely, legislative or official expense.

In a leading case, *State ex rel. Griffith v. Turner*, 117 Kan. 755, 233 Pac. 510, the court stated:

"All legislative expenses may be properly paid. The expenses that may be paid are not those that are incurred by a member of the Legislature because he is at the capital city; they are those that are incurred by him in the performance of his duties. They are legislative expenses, not personal expenses. The distinction between expenses that are legislative and those that are personal is that legislative expenses are those that are necessary to enable the Legislature to properly perform its functions, while those that are personal are those that must be incurred by a member of the Legislature in order to be present at the place of meeting - expenses for his personal comfort and convenience, which have nothing to do with the performance of his duty as a member of the Legislature.  
\* \* \*

In *Dixon v. Shaw*, 122 Okla. 215, 253 Pac. 500, 50 A.L.R. 1237, the court, after stating that the constitutional provision for per diem and mileage for legislators was intended to cover their living costs at the state capital, went on to say:

"\* \* \* This, however, cannot be construed or held in any wise to impair the discretion of the Legislature in allowing expenses in event, in its judgment in the exercise of any of its powers, legislative or inquisitorial, it, or any of its members as committees or otherwise, should deem it

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advisable or expedient to make investigation that required their leaving the capital, that the expenses incident thereto could not be provided for. \* \* \*

In *Terrell v. King*, 118 Tex. 237, 14 SW2d 786, the Legislature had created an interim tax survey committee consisting of members and nonmembers of the Legislature and had provided that the committee members should receive as compensation \$10 per day for each day served, together with railroad fare, and hotel, telegraph, telephone, postage, and express expenses incurred in the discharge of their duties. The right of the legislative members of the committee to receive such compensation and expenses was challenged because of constitutional provisions with respect to per diem and mileage for members of the Legislature. The court held that they could not receive the \$10 per day compensation but that the provision for expenses was valid (assuming it did not cover expenses incurred in going to or from the capital, or residing in the capital, during a session of the Legislature). In upholding the payment of the expenses as legislative or official, instead of personal, expenses, the court said:

" \* \* \* No one would question legislative disbursements for comfortable assembly halls and committee rooms, or for clerks, stationery, etc. Within the same category of legitimate expenses of the Legislature or of either house comes reimbursement to members for actual expenses reasonably incurred in order to perform duties devolving on duly authorized committees of the Legislature, or of either house, when such committee members are called to other points than the capital, or when called to the capital otherwise than during the sessions of the Legislature."

Applying the foregoing to the matter here under consideration, it appears that, if the constitution had merely provided that the members of the Committee should receive no compensation in addition to their salary as members of the General Assembly, there would have been substantial authority for holding that their expenses in attending Committee meetings were personal expenses for which they could not be reimbursed. The exception, "but may receive their necessary expenses while attending the meetings of the committee," was necessary in order to avoid this possible result.

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But, in view of the well-established distinction between personal and official expenses, it seems clear that the provisions in the constitution and statutes concerning expenses in attending Committee meetings do not prohibit reimbursement for the expenses now in question. The members of the Committee who attended the meetings of the National Legislative Conference in Miami and Seattle did so as representatives of the Committee performing duties on behalf of the Committee under the authorization and direction of the Committee. The expenses they incurred were official or Committee expenses, rather than personal expenses; and, as such, their reimbursement is not prohibited by the constitutional and statutory provisions relating to compensation and expenses of Committee members.

We turn now to the appropriation for the Committee for the current biennium, which reads as follows (Laws, 1955, p. 197):

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the use of the Committee on Legislative Research for the payment of salaries and expenses of the members, employees and clerical hire, other necessary expenses for the period beginning July 1, 1955 and ending June 30, 1957."

This appropriation contains no restriction concerning the use of the funds for travel expenses and clearly is in broad enough terms to permit the use of the funds for reimbursement of the expenses here in question.

#### CONCLUSION

Upon the basis of the foregoing, it is the opinion of this office that those members of the Committee on Legislative Research who were authorized by the Committee to represent the Committee at meetings of the National Legislative Conference in Miami, Florida, in 1955, and in Seattle, Washington, in 1956, could be legally reimbursed, from funds appropriated for the use of the Committee, for expenses necessarily incurred by them in attending such meetings.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Baumann.

Yours very truly,

JOHN M. DALTON  
Attorney General