

FEES: Curators of Lincoln University not entitled to per diem and mileage except within the State and not for a greater distance than from Curator's home to place of board meeting.

1-18
January 10, 1936



Board of Curators,
Lincoln University,
Jefferson City, Missouri.

Mr. William J. Thompkins,
Recorder of Deeds,
Washington, D. C.

Gentlemen:

This will acknowledge receipt of a letter from the Board of Curators of Lincoln University which is as follows:

"Will you please give us an opinion on the following matter:

"The Board of Curators of Lincoln University meets at certain specified times and at these times it is the custom for the University to pay all expenses of each member incident to his attending the meeting. All members of the board have their permanent residences in the State of Missouri. We would like to know if it is legal for us to pay the expenses incurred by a member of the board incident to his attending the above mentioned meeting, if he, let us say, has his permanent residence in St. Louis, but is temporarily residing in New York where he is employed? Is it legal for us to pay his expenses from New York to Jefferson City and return?"

Also a letter from William J. Thompkins which is as follows:

"I am, herewith, submitting to you, through the kindness of Senator Buford, a formal statement setting forth the facts justifying my rights as a member of the Board of Curators of Lincoln University to receive compensation, as such member, while engaged upon the business of the Institution to and from Washington, D. C."

Accompanying the latter letter is an enclosure of suggestions.

We construe your inquiry to be as follows: A member of the Board of Curators of Lincoln University has his legal residence in Kansas City and has employment in the City of Washington, D. C., where he spends part or all of his time in the performance of official duties there. A meeting of the Board of Curators of Lincoln University is held at Jefferson City, Missouri, and such member, who has his legal residence at Kansas City and who is at the time of the meeting and immediately prior thereto physically in the City of Washington, D. C., travels from Washington, D. C., to Jefferson City, Missouri, for the purpose of attending and does attend such meeting of the Board of Curators. Is he entitled to mileage from Washington, D. C., to Jefferson City, Missouri, and is he entitled to per diem or other expenses in so attending such meeting?

Section 9617 of Article 19 of Chapter 57, R. S. Mo. 1929, with respect to the qualifications of members of the Board of Curators of Lincoln University, provides:

"There shall be no restrictions as to residence or politics except that all appointees shall be citizens of Missouri and shall reside within the state."

Section 9621, among other things, provides:

" * * * the powers, authority, responsibilities, privileges, immunities, liabilities and compensation of the board of curators of the Lincoln university shall be the same as those prescribed by statute for the board of curators of the state university of Missouri, except as stated in this article."

Section 9628 provides that the Board of Curators of Missouri University "shall receive their actual expenses,

which shall be paid out of the ordinary revenues of the university".

Any and all revenue obtained by the Missouri University must necessarily be from "public funds derived from taxes, fees, licenses or in any other manner prescribed by law", and members of the Board of Curators of Lincoln University are officials within the meaning of Section 11405. They, before entering upon the discharge of their official duties, must be appointed by the Governor and must have a commission issued to them by the Secretary of State, and are required to take the prescribed oath, and they therefore come under the provisions of Section 11405, and in order to receive their expenses they must comply with the provisions of said statute.

Section 11405 is as follows:

"Whenever any official, employe or any other person shall travel at the public expense of the state and is paid or reimbursed from any public funds derived from taxes, fees, licenses, or in any other manner prescribed by law, the provisions herein set forth shall govern and no other.

"(a) Before any person shall travel at the public expense as herein provided, such person shall have from the head of the department on whose account the travel is made a written authority stating the nature of the duty to be performed and the counties or places to be visited, provided that in the case of a person whose general duties require traveling a general authority for one year may be issued stating the general duties of such employe.

"(b) 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 and the state auditor in auditing such an account is hereby authorized to pass upon the reasonableness of the amount allowed by the authority.

"(c) 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. All claims for reimbursement shall be submitted to the state auditor upon a form approved by him, which form shall contain the information herein provided. It shall be made out in duplicate and the original shall be sworn to by the person claiming payment or reimbursement, and the original shall remain in the files of the state auditor and the duplicate shall be retained in the files of the department granting the authority. 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 expense 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. If any item of expense exceeds one dollar (\$1.00), it shall be supported by a sub-voucher or receipt signed by the person to whom payment was made by the official, employe or person traveling at the public expense as herein provided and such sub-voucher or receipt shall show in detail the information required by this section. Also the place and date. No official, employe or person traveling at the public expense shall submit any voucher or claim for partial payment or reimbursement on account of traveling expenses but such a voucher or claim must contain all and every expense incurred within the time it purports to cover. The oath or affirmation of the official, employe or person traveling at the public expense shall be in the following form:

"I, _____, do solemnly swear, 'or affirm' the above claim is correct and just, that no part of the same has been paid, that the expense was necessary to the public business of the state, that payment was made out of personal funds and that I have not been reimbursed therefor, and I have not received and will not receive from any source whatever any payment of any part thereof except as provided by law."

It will be noted that this section is all-inclusive and in terms covers any person who shall travel at the public expense of the State and is paid or reimbursed from any public funds or in any manner prescribed by law.

Statutes respecting fees are strictly construed.

In the case of State ex rel. v. Gordon, 245 Mo. 12, l. c. 27, the Supreme Court of this state declared as follows:

"Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the Kansas City Court of Appeals says: 'It seems the general rule in this country, as announced by the decisions and text-writers, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further, it seems well settled that if the statute provides compensation in a particular mode or manner, then the officer is confined to that manner, and is entitled to no other or further compensation, or to any different mode of securing the same. * * *'"

And at page 29 the court says:

"As the Legislature may fix such compensation to a public office as it sees fit, or none at all, we can see no constitutional objection to its attaching such conditions as it deems proper to the

payment of the compensation, such conditions to be binding upon any one who thereafter enters upon such office and performs its duties. As stated above, the compensation has no relation to the amount or value of the service. There can be no application of the doctrine of quantum meruit. The officer takes the office cum onere. Having accepted it with the conditions imposed by the Legislature, upon whose will he must depend for any compensation at all, he cannot afterwards challenge the power of the Legislature to impose such conditions."

In the case of King v. Riverland Levee District, 279 S. W. 195, the court said, l. c. 196:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. * * *
Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking vs. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same."

While the payment under consideration to a member of the Board of Curators of Lincoln University is reimbursement for expenses, the same rule of statutory construction applies to it that applies when compensation in the form of salary or fees is concerned. The same reason applies to each, that is, the safeguarding of the public revenue from improper or extravagant expenditure.

In construing a kindred statute which defined the fees to which a sheriff is entitled for transporting prisoners to the State Penitentiary from the jail of the county where the prisoner was convicted, this office held in an opinion dated July 5, 1933:

"That the fees allowable to sheriffs, county marshals or other officers for the transportation of convicts to the State Penitentiary shall be estimated by the shortest possible route from the place of departure to the Penitentiary, whether that be by highway or by railroad. * * *"

It appears from the foregoing that the fair meaning of the law is that the member of the Board of Curators seeking reimbursement for expenses incurred in attending a board meeting is limited to the reasonable actual expenses incurred by him in going from a point within the State of Missouri to the place of meeting of the board, which point shall in no event be a greater distance from the place of meeting of the board than is said curator's home distant therefrom. To hold otherwise would be to open up the revenues to possible demands where curators might be in distant parts of the world and go from such point to the place of the board meeting. The Legislature evidently did not intend to authorize payment of such unusual or extraordinary expenses. Reason must not be lost sight of. It dominates the law. It does not justify payment under the guise of expenses of the cost of a trip from Hong-Kong to Jefferson City to attend a board meeting, and yet if such expenses be paid from Washington, D. C., to Jefferson City, Missouri, by the same course of reasoning, the curator, coming from Hong-Kong, would be entitled to his expenses from that point. The statute specifies that the curators "shall reside within the state" and evidently does not contemplate that they may be paid for a greater distance of travel than from their residence to the place of the board meeting.

We also call attention to the fact that the appropriation act appropriating money for Lincoln University does not provide in terms for the payment of traveling expenses outside of the State of Missouri, while the appropriation act for other parts of the state government or departments thereof, for instance, the appropriation act for the Attorney General's department, Laws of Missouri, 1935, page 22, calls for "traveling within and without the state", which would appear to be an additional reason why the Legislature did not intend that Lincoln University should pay traveling expenses of members of the Board of Curators beyond the State of Missouri.

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A person who has incurred expenses on behalf of the State of Missouri or of Lincoln University in the proper discharge of his official duties with reference to the state institution, and for which there is no provision now made in the law for reimbursement therefor, has, of course, the opportunity of presenting his claim to the Legislature when it meets, and the Legislature may pass a special relief appropriation reimbursing him if they see fit to do so.

We find no provision in Article 19 of Chapter 57, R. S. Mo. 1929, nor in Article 20 of Chapter 57, to which Article 19 refers for certain purposes, which authorizes the payment of per diem to members of the Board of Curators of Lincoln University.

CONCLUSION

We are of the opinion that, regardless of Section 11405, R. S. Mo. 1929, a member of the Board of Curators of Lincoln University whose legal residence is at Kansas City, Missouri, and who is in the City of Washington, D. C., whether on business or pleasure, and whether for a day or a year, is not entitled to be reimbursed for traveling expenses from the City of Washington back to Jefferson City, Missouri, in order to attend a meeting of the Board of Curators of Lincoln University, nor is he entitled to any per diem allowance for the days spent in going to, attending or returning from such board meeting.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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