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Mr. John Smith
SCHOOLS: Interpretation of the meaning of "actual and necessary traveling expenses" as applied to county superintendent of schools.

7-5
June 25, 1946



Honorable Harry T. Limerick, Jr.
Missouri House of Representatives
Jefferson City, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter requesting an opinion of this department, as follows:

"Senate Committee Substitute for Senate Bill No. 41 passed by the Sixty-third General Assembly pertained to travel allowance for the office of County Superintendent of Schools.

"House Committee Substitutes for House Bills No. 771, No. 770, and No. 916, retained the same wording for counties of the fourth class, third class, and first class respectively, with House Bill No. 900 pending for counties of the second class.

"What is meant by the phrase 'actual and necessary traveling expenses'? Does it include lodging and meals?

"Would it permit payment of traveling expenses to professional meetings which the county superintendent would properly be expected to attend?"

Your letter presents two distinct questions for opinion. First, is lodging and meals a part of "actual and necessary traveling expenses" of a county superintendent of schools; and, second, is the county superintendent of schools entitled to reimbursement under the above quotation in attending professional meetings? This opinion will take each up separately in the order presented.

We have been unable to find any cases in this jurisdiction that have construed the meaning of the phrase "actual and necessary traveling expenses" so it will be necessary that we not only look to the courts of our state, but also to the courts of other states, for the answer to our first question.

In the New Mexico case of State ex rel. Scott, Dist. Atty., v. McClure, et al., District Judges, 143 Pac. 477, a District Attorney was attempting to collect reimbursement for board and lodging while in the discharge of official duties. A New Mexico statute provided "that the actual traveling expenses of district attorneys, incurred while in the discharge of their duties, shall be paid by the county * * *." The Supreme Court of New Mexico held, at l. c. 478:

"* * * We are clearly of the opinion that such items are proper charges against the several counties, when the same arise by reason of necessity of the district attorney's traveling upon public business of the counties against whom the charge is made. * * * * *"

In the case of State ex rel. Tim Birmingham v. George Hackmann, State Auditor, 276 Mo. 504, the court did construe the meaning of the words "all necessary traveling expenses." Here the State Game and Fish Commissioner attempted to collect for hotel bills while discharging his official duties away from his residence, but the State Auditor refused to pay him, saying that the hotel bills should not be included under the phrase "all necessary traveling expenses." In holding that the State Auditor should pay these hotel bills the court states, at l. c. 508:

"* * * But as it is there is absolutely no excuse for the refusal to audit and allow these expenses, which are amply provided for both by the law creating the office and prescribing the duties, and the Appropriations Act covering the expense of the office.

"A case as plain as this should have been disposed of without recourse to the courts. * * * * *"

It might be argued that "traveling expenses " refer to expenses only incurred for a manner of conveyance, and must be strictly construed in favor of the state. This question was answered in the California case of Corbett v. State Board of Control, et al., 204 Pac. 823, where the court states, at l. c. 824:

"If the meaning of the phrase 'traveling expenses' prevents its application to anything except expenses paid for some kind of locomotion or conveyance, doubtless this interpretation might be sustained. But it is a familiar rule of statutory interpretation that words and phrases are construed according to the approved usage of the language, and that words of common use are to be taken in their ordinary and general sense. Gross v. Fowler, 21 Cal. 396; Pol. Code, Sec. 16. Ever since the year 1878 the law has provided that the members of the Supreme Court shall be allowed their 'actual traveling expenses' in going to and from their respective places of residence to attend the sessions of the court. It has been the universal practice for that period to allow the members and officers of that court, not only their railroad fare, but also their hotel bills during the time of their attendance on the sessions. The phrase quoted has always been understood to include these expenses. * * * * *

From what has been said above, it seems very clear to us that the phrase, "actual and necessary traveling expenses" would include board and lodging in addition to actual expenses for a manner of conveyance from the place of the statutory business office to the place that one must go to discharge his official duties.

It has long been held by the courts of this state that before a public officer, claiming compensation or fees for official duties performed, may receive payment for same he must point out the statute authorizing such payment. Nodaway County v. Kidder, 344 Mo. 795, 129 S.W. (2d) 857; Ward v. Christian County, 341 Mo. 1115, 111 S.W. (2d) 182.

The courts of our state have considered interpretation of statutes by public officers charged with their execution as a factor in determining the intention of the General Assembly. State ex rel. Barrett v. First National Bank, 297 Mo. 397, 249 S.W. 619. Public officers are expected to attend certain professional meetings in order that they might increase their knowledge of the affairs which may come to their official attention, and, in so doing better serve the public. We assume it is this type of meeting you are referring to in your letter in addition to those meetings that are specifically set out in Article 14, Chapter 72, R. S. Mo. 1939. In the California case of Corbett v. State Board of Control, et al., supra, the Supreme Court said it was the universal practice by the state to allow hotel bills as a part of traveling expenses, and, since "words and phrases are construed according to the approved usage of the language" the Legislature intended for the hotel bills to be a part of traveling expenses. Following the same reasoning, the General Assembly of Missouri, knowing that public officers have been collecting traveling expenses for the type of meetings mentioned above, did not attempt to limit the traveling expenses of the county superintendent of schools in House Bills Nos. 771, 770 and 916, House Bill No. 900 in its perfected form as of this date, or Senate Bill No. 41. So, therefore, we should construe the language of these bills according to the approved usage and allow the County Superintendent of Schools actual and necessary traveling expenses to meetings that have been deemed proper to attend by past practice.

Conclusion

Therefore, it is the opinion of this department (1) that the county superintendent of schools, in collecting his "actual and necessary traveling expenses" as provided by House Bills Nos. 771, 770 and 916, House Bill No. 900 in its perfected form as of this date, or Senate Bill No. 41, may collect for board and lodging in addition to his actual expenses for conveyance; and (2) that he may be reimbursed for his "actual and necessary traveling expenses" for those meetings that it is necessary for him to attend.

Respectfully submitted,

APPROVED:

PERSHING WILSON
Assistant Attorney General

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