

Opinion No. 59-185

November 6, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Dr. F. L. Schneider Secretary - Chief Veterinarian Sheep Sanitary Board of New Mexico Room 334 Korber Building Albuquerque, New Mexico

{*287} This is in response to your recent inquiry asking for our opinion regarding the following question:

Can the Sheep Sanitary Board by resolution reimburse its employees in the amount of eight cents per mile for official travel performed by private automobile, such amount being above that amount presently being authorized by the State Board of Finance?

Our answer to your question is that employees of the Sheep Sanitary Board may not be reimbursed for official travel in private automobiles at a rate exceeding that authorized by the Board of Finance.

The basic authority for payment of mileage rates to State employees for official travel performed in the State of New Mexico in their own private automobiles is Chapter 288, Section 19, Laws of 1959 which states in part that the maximum rate which may be allowed for travel for privately owned cars {*288} shall be ten cents per mile, the rate allowed being at the discretion of the State Board of Finance. The Board of Finance to date has set the allowable rate at seven cents per mile. Therefore, unless some other authority can be found allowing the Sheep Sanitary Board to authorize a greater rate, you can legally pay your employees no more than the seven cents per mile rate presently in effect as set by the Board of Finance.

We have found no such other authority. Nowhere in Section 7 of said Chapter 288, being your appropriation authority for the 48th and 49th Fiscal Years, can any such authority be found. We are aware of Chapter 291, Section 1, Laws of 1959 exempting you from the provisions of Section 11-2-65, N.M.S.A., 1953 Compilation (P.S.). However, in our opinion said chapter and section do not grant to the Sheep Sanitary Board the authority to exceed mileage rates set by the Board of Finance.

Section 11-2-65 (P.S.) requires that before any vouchers, purchase orders are issued or contracts entered into involving the expenditure of public funds by any State agency, the authority for such proposed expenditures shall be determined by the Division of Finance and Administration. By virtue of the exemption cited above, the Sheep Sanitary Board need not submit its vouchers, purchase orders and contracts calling for the expenditures of public moneys for the determination of authority spelled out in Section 11-2-65 (P.S.). However, this exemption does not mean that you may ignore the authorized mileage rates determined by the State Board of Finance pursuant to its authority to set such rates set forth in Chapter 288, Section 19, Laws of 1959.

We note that the sum of eight cents per mile has been paid to certain of your employees. Each employee so paid must refund all amounts they have received in excess of seven cents per mile as spelled out in the State Auditor's letter to you of October 29, 1959.

Philip R. Ashby

Assistant Attorney General