

Opinion No. 64-124

September 24, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Edwin S. Dahl, Budget Analyst, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

FACTS

Three state boards; the State Armory Board, Board of Supervisors of the Department of Courtesy and Information and the Collection Agency Board, have no express provision contained in their respective legislative enactments governing the compensation of their board members.

QUESTIONS

1. Under what authority, if any, may members of these boards be paid compensation or reimbursed for their expenses?
2. May expenses of such board members be reimbursed at a standard rate in lieu of actual expenses? If so, at what rate?
3. May these individuals be regarded as state officers for the purpose of Section 11-1-9, N.M.S.A., 1953 Compilation?

CONCLUSION

1. The 1964 General Appropriation Act, Chapter 2, Section 17, Laws 1964, Second Special Session.
2. Yes, such public officers and employees may receive an amount not to exceed \$ 10.00 per diem for travel within the state and not to exceed \$ 20.00 per diem for out-of-state travel.
3. Yes.

OPINION

ANALYSIS

Three state agencies, the State Armory Board, the Board of Supervisors of the Department of Courtesy and Information and the Collection Agency Board, were not expressly included in the Mileage and Per Diem Act (Laws 1963, Chapter 31). However, the officers and employees of such boards are subject to the allowances for travel and expenses set forth in the 1964 General Appropriation Act, Section 17 (Second Special Session, Chapter 2, 1964). This Section provides as follows:

"Travel Expenses. -- The state board of finance shall allow in lieu of actual expenses of subsistence and lodging for official travel of public officers and employees an amount not to exceed ten dollars (\$ 10.00) per diem for travel within the state. The rate of per diem or expense allowance for out-of-state travel shall be at the discretion of the governor but not to exceed twenty dollars (\$ 20.00 per diem. The state board of finance shall allow a mileage rate for travel by privately owned automobiles in an amount not to exceed ten cents (.10) per mile.

In our opinion, assuming that available funds exist in the name of such board, each of the three boards stated above, and their officers and employees are entitled to reimbursement for travel, per diem and mileage under the provisions of Section 17, quoted above and in accordance with the procedures enumerated in Section 11-1-9, N.M.S.A., 1953 Compilation.

The second question presented inquires if expenses may be reimbursed to the employees or officers of such boards at a standard rate in lieu of actual expenses, and if so at what rate? Section 17 of the 1964 General Appropriation Act, supra, expressly states that the State Board of Finance shall allow in lieu of actual expenses of subsistence and lodging for travel of public officers and employees an amount not to exceed ten dollars (\$ 10.00) per diem for travel within the state. This statutory feature empowers the State Board of Finance at its discretion to allow in lieu of actual expenses, state officers or employees a set amount up to a maximum of ten dollars a day as per diem allowance for subsistence and lodging within the state, and up to ten cents per mile travel allowance for privately owned automobiles.

Thirdly, the question is asked if the members of the three boards affected may be regarded as "state officers" for the purposes specified in Section 11-1-9, N.M.S.A., 1953 Compilation. Clearly, we believe the answer to this question is in the affirmative. Each of the three boards are appointed by the Governor of this State (Collection Agency Board, Section 67-15-27, N.M.S.A., 1953 Compilation; State Armory Board, Section 9-7-3, N.M.S.A.; and the Supervisors of the Department of Courtesy and Information, 67-15-27, N.M.S.A., 1953 Compilation), and the members of such boards are public officers within the contemplation of Section 11-11-9, N.M.S.A., 1953 Compilation and Article XX, Section of the New Mexico State Constitution.