

## Opinion No. 65-210

October 21, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. Alex Armijo, State Auditor, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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What is the proper per diem figure for the chairman of the State Highway Commission?

#### CONCLUSION

The same rate authorized for employees of the state, i.e., \$ 18 per day instate; \$ 25 per day out-of-state plus \$ 10 per mile for a private vehicle.

### OPINION

#### {\*342} ANALYSIS

Prior to the 1965 legislative session members of the State Highway Commission received per diem and milage pursuant to Section 55-2-1, N.M.S.A., 1953 Compilation (P.S.). This section, as amended in 1963 provides as follows:

"The members of the state highway commission shall receive {\*343} per diem and mileage as provided in the per diem and mileage act, and shall receive no other compensation, perquisite or allowance."

The 1965 General Appropriation Act, Chapter 313, Laws 1965, provided a salary for the chairman of the State Highway Commission and stated that the salary was "in lieu of the compensation provided in Section 55-2-1, New Mexico Statutes Annotated, 1953 Compilation" Thus the chairman of the State Highway Commission is not to receive per diem and milage under the Per Diem and Mileage Act.

However, in 1965 the legislature also enacted Section 5-10-6, N.M.S.A., 1953 Compilation (P.S.) which specifically sets forth the per diem rate for both appointed nonsalaried state officials who serve on commissions and salaried state officials who serve on commissions. The chairman of the State Highway Commission falls in the latter category since he is now salaried. Accordingly he is to receive per diem and mileage pursuant to the following provision in Section 5-10-6, supra.

"Nothing in this act shall prevent a person who receives a salary from state funds from serving as a member of any board or commission, but if he does serve, he shall not be entitled to per diem and mileage for service on the board or commission, unless the service is away from the town in which his duty station is located, and in that case he shall receive per diem and mileage allowance **at the rate set for salaried state employees**, rather than the rate set in the Per Diem and Mileage Act." (Emphasis supplied).

State agencies and departments are now permitted to set per diem rates within certain limits (up to twenty-dollars a day in-state and up to twenty-five dollars a day out-of-state. Section 18, Chapter 313, Laws 1965). Accordingly the chairman of the State Highway Commission should receive per diem and mileage when away from the town in which his duty station is located at the rate authorized by the Board of Finance for other employees of the State, i.e., \$ 18 per day in-state; \$ 25 per day out-of-state; 10 [cents] per mile for private vehicles.