

Opinion No. 66-65

May 24, 1966

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

TO: Mr. Ben Mason, Chief, Budget Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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1. May the members of the Governor's Advisory Council for Personnel Administration be reimbursed under provisions of the Per Diem and Mileage Act for attendance at official council meetings?
2. May the State Personnel Board reimburse the members of the Governor's Advisory Council for Personnel Administration for professional services rendered to the State Personnel Board and for attendance at official council meetings?

CONCLUSIONS

1. Not under the Per Diem and Mileage Act, but the same result if members are state non-salaried.
2. Personnel Board may pay per diem and mileage for attendance at official council meetings.

OPINION

{*81} ANALYSIS

Section 5-10-5, N.M.S.A., 1953 Compilation, the Per Diem and Mileage Act, provides that it is applicable to state officers only if "this is accomplished by specific statutory reference to the Per Diem and Mileage Act." This, of course, has not been done in the case of the Governor's Advisory Council for Personnel Administration since, as we understand it, this Council was created by executive order and not by legislative enactment.

We must turn then to Section 5-10-6, N.M.S.A., 1953 Compilation, a 1965 Act, governing per diem for state officials appointed to boards and commissions. This section provides that appointed **non-salaried** state officials of the executive department who serve on boards or commissions are to receive per diem at the rates specified in the Per Diem and Mileage Act.

However, a state salaried official who serves on a board or commission is entitled to per diem only if the service is away from the town in which his duty station is located and, in that case, at the rate set for salaried state employees, rather than the rate set in the Per Diem and Mileage Act.

It is our understanding that none of the eight members of the Governor's Advisory Council for Personnel Administration are salaried state officials. If this is correct, and if the members are entitled to per diem, it would be at the rates set in the Per Diem and Mileage Act.

In our opinion the members of the Council are "state officials of the executive department" even though the Council was established by executive order. If this is true, and we believe it is, the members of the Council are entitled to per diem. See Attorney General Opinion No. 64-124.

The question then becomes where are the funds to pay such per diem to come from since the Council has no appropriation. The Personnel Board has indicated that it would pay them inasmuch as this Council works closely with the Personnel Board and provides useful services to the Board. In our opinion this is permissible.

As far as the Personnel Board paying members of the Council moneys for professional services rendered, we would need considerably more information. If such services are simply those rendered in their capacity as Council members, then they cannot be paid for such services.