

Opinion No. 79-40

December 10, 1979

OPINION OF: Jeff Bingaman, Attorney General

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TO: Mr. Alvino E. Castillo, State Auditor, P.O. Box 2383, Santa Fe, New Mexico 87503

Members of interim legislative committees are paid per diem and mileage in accordance with Article IV, Section 10, N.M. Const. and Section 2-1-9 NMSA 1978. Only designated members of the Legislative Finance Committee may appoint substitutes.

QUESTIONS

1. May members of the Legislative Finance Committee be reimbursed for attendance at meetings between legislative sessions at the rates authorized in Article IV, Section 10, N.M. Constitution by virtue of Section 2-1-9 NMSA 1978?
2. May an appointed member of the Legislative Finance Committee have another member of the legislature substitute for him at meetings and receive per diem and mileage?

CONCLUSIONS

1. Yes.
2. No.

ANALYSIS

Article IV, Section 10 of the New Mexico Constitution states:

"Each member of the legislature shall receive:

A. as per diem expense the sum of not more than forty dollars for each days attendance during each session, **as provided by law**, and ten cents for each mile traveled in going to and returning from the seat of government by the usual traveled route, once each session as defined by Section 5, Article IV, of this constitution;

B. per diem expense and mileage at the same rates as provided in Subsection A for service at meetings required by legislative committees established by the legislature to meet in the interim between sessions; and

C. no other compensation, perquisite or allowance. "[Emphasis added.]

OPINION

The prevailing rule in this State is that a constitutional provision is not self-executing if "it merely indicates a principle without laying down rules having the force of law." **State ex rel. Robinson v. King**, 86 N.M. 231, 522 P.2d 83 (1974). Here, the per diem clause of Subsection A clearly requires legislation to give effect to the maximum rate permitted. The mileage clause, however, does not have this language and is complete in itself. Nonetheless, in Section 2-1-8 NMSA 1978, the legislature has provided for payment of both rates while it is in session.

Section 2-5-6 NMSA 1978 is a specific statute applying to the Legislative Finance Committee. It provides for a different and lower rate of reimbursement:

{*97} "The members of the committee shall receive fifteen dollars (\$15.00) per diem to reimburse said members for their actual expenses of each day in actual attendance and while engaged in the performance of official duties for said committee. Said members shall also receive reimbursement for travel expenses at the rate of eight cents per mile for attending meetings or traveling in connection with their duties."

Standing alone, there is no reasonable question that the statutory rate for committee reimbursements would govern. The matter becomes complicated, however, because of Section 2-1-9 NMSA 1978. This provision was enacted in 1971. In 1972 and 1975, the statute was amended to increase the rate of per diem; the 1975 amendment established the current rate of \$40.00 per day. The statute states in relevant part:

"Out-of-state travel of members, officers, and employees of the legislative branch of government shall be exempt from approval by any member of the executive branch. Members of the legislature serving on official business for interim committees shall receive per diem at the rate of forty dollars (\$40.00) a day for each day served, including travel time, and mileage for each mile traveled by privately owned automobiles at the rate of ten cents (\$.10) a mile or by privately owned aircraft at the rate of fifteen cents (\$.15) per air mile on official business of the committee within the state. . . ."

In any event, Sections 2-5-6 and 2-1-9 NMSA 1978 are in conflict. Since we have concluded that the maximum rate of per diem permitted by Article IV, Section 10 requires legislation to be effective, we must resolve the conflict between the two statutes. Such conflicts may be resolved by applying the rules of statutory construction.

The foremost rule of statutory construction is that courts seek only to determine legislative intent. **Trujillo v. Romero**, 82 N.M. 301, 481 P.2d 89 (1971). We are guided by the same consideration. In addition, we must avoid construction of a statute which leads to an absurd or unreasonable result. **State ex rel. Newsome v. Alarid**, 90 N.M. 790, 568 P.2d 1236 (1977).

Here we have a specific statute which authorizes a much lower rate of per diem and mileage than the more general. Ordinarily, the specific statute would control even

though passed earlier than the more general one. **State v. Lujan**, 76 N.M. 111, 412 P.2d 405 (1966).

However, the subject matter of both statutes is limited and the second sentence of the quoted part of Section 2-1-9 NMSA 1978 is coextensive with Section 2-5-6 NMSA 1978. Moreover, Sections 2-3-15 and 2-10-4 NMSA 1978, dealing with the Legislative Council and the Legislative Education Study Committee, also provide for lower rates to their members than does Section 2-1-9 NMSA 1978.

Section 2-1-9 NMSA 1978 is specifically concerned with reimbursements to members of interim committees. The only interim committees are the three mentioned. Giving controlling effect to the earlier **specific** statutes would completely nullify the second sentence of Section 2-1-9 NMSA 1978. This result would be contrary to the clear legislative intent to provide reasonable reimbursement for expenses incurred by legislators as evidenced by the current amendments to Section 2-1-9 NMSA 1978.

{*98} Further, the legislature amended Section 2-10-4 NMSA 1978 by Laws of 1979, Chapter 267, Section 4 to provide that the Legislative Education Study Committee would be reimbursed "in the same manner and under the same policies as the legislative council." Prior to the amendment, the section provided that members of the Legislative Education Study Committee would receive \$20.00 per day and \$.10 per mile. We cannot ascribe to the legislature an intent to reduce those higher rates. Membership on interim committees, after all, is not intended to be punitive. Therefore, we can only assume that the legislature has intended Section 2-1-9 NMSA 1978 to govern the Legislative Education Study Committee as well as the Legislative Council. The same conclusion must apply to the Legislative Finance Committee.

Finally, we must point out that the legislature at any time after the effective date of the 1971 amendment to Article IV, Section 10 could have passed amendments to the specific statutes governing expenses for each interim committee but chose instead to amend Section 2-1-9 NMSA 1978.

As to the second question, Section 2-5-1 NMSA 1978 defines the rules for the make-up of the membership of the Legislative Finance Committee. Section 2-5-1 NMSA 1978 specifically provides that the Senate Finance Committee, the House Appropriations and Finance Committee and the House Taxation Committee, or members of these committees designated by their chairmen, shall serve on the Legislative Finance Committee. There is, however, no such authority for substitution for the other Legislative Finance Committee members appointed by the procedures in Section 2-5-1 NMSA 1978.

Since the legislature could have provided for substitutes for **all** members but did not do so, the authority for the other Legislative Finance Committee members to appoint substitutes may not be implied. As a rule, when a statute provides one specific procedure, all others are excluded. See, e.g. **Fancher v. Board of County Commissioners of Grant County**, 28 N.M. 179, 210 P. 237 (1922). Thus, the effect of

Section 2-5-1 NMSA 1978, as amended by Laws 1978, Chapter 21, Section 12, is to preclude substitution for the remaining members of the Legislative Finance Committee.

The provisions of Article IV, Section 10 both permit and restrict the payments of allowances to members of the legislature "for services at meetings required by legislative committees established by the legislature to meet in the interim between sessions." The Legislative Finance Committee now established by the legislature is comprised of the chairmen of three standing committees, or their designees, plus five other members appointed pursuant to Section 2-5-1 NMSA 1978. Those eight legislators may be reimbursed for expenses incurred for serving on the committee pursuant to Article IV, Section 10.

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