

## Opinion No. 41-3687

January 11, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Tom W. Neal Director, Legislative Reference Bureau Santa Fe, New Mexico

{\*25} This will acknowledge receipt of your letter of the 6th requesting an opinion as to power of the Legislature to pay the expenses of committee members attending committee meetings during the recess between the two sessions.

This office has heretofore given an opinion on this question. The opinion, No. 3676, written by A. M. Fernandez, Assistant Attorney General, on December 30, 1940, holds in substance, among other things, that the Legislature has the authority to pay the expenses of committee members during the recess between the two sessions.

I have made a minute study of all of the authorities cited by Mr. Fernandez in the opinion referred to, and have, in addition, made a separate research. I have not been able to find a single case denying the right to pay such expenses except as stated in Mr. Fernandez's opinion "where the allowance was clearly a scheme to merely boost the compensation of {\*26} the legislators, or where the committees were engaged in their work at the capital while the Legislature was actually in session."

You state in your letter "The amendment (meaning Constitutional Amendment No. 3, Session Laws of 1939) allows mileage for attending both the first and second terms of the Legislature, and to that extent would modify Section 10 of Article IV, and would repeal the following phrase in Section 10, to-wit: 'once each session'".

I agree with your contention that the phrase "once each session" as it appears in Article IV, Section 10 of the New Mexico Constitution, is reported by implication by Constitutional Amendment No. 3, page 693, Session Laws of 1939, and I do not believe that the last clause of Article IV, Section 10 New Mexico Constitution, is repealed which reads as follows:

"and he shall receive no other compensation, perquisite or allowance."

Article IV, Section 10 of the New Mexico Constitution, reads as follows:

"Each member of the legislature shall receive as compensation for his services the sum of five dollars for each day's attendance during each session 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, and he shall receive no other compensation, perquisite or allowance."

I am of the opinion that the allowance made for mileage would not be construed by the courts as being an allowance made for expenses, but one made for compensation. The Section begins "each member of the Legislature shall receive as compensation \* \* \* \*". There is considerable authority holding that such a provision for mileage is not considered as expenses but as an allowance of compensation.

Clearly, to my mind, the Constitutional Convention relative to this section was legislating with respect to compensation as the first words above referred to indicate, and that the reference to mileage was intended as compensation, and that the limitation at the end of said section has reference only to allowance of compensation.

Assume, however, for the sake of argument, that they had in mind "expenses". Under the theory that the State Constitution is a limitation and not a grant of power, the limitation would be confined to the time that the Legislature was actually in session and not the work of committees during recess or subsequent to adjournment.

In view of the foregoing. I concur fully with the opinion, Opinion No. 3676, heretofore handed down by Mr. Fernandez insofar as he upholds the power of the Legislature to pay the expenses of committee members during the recess between the two sessions.

In passing I would suggest that in the event the Legislature should deem it advisable to name any committee members during the recess between the two sessions, that they specifically name a reasonable amount to be allowed such members, for expenses, in accordance with this and Opinion No. 3676.

Trusting that the above fully answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General