



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

October 21, 1998

George R. Vereen, Chairman  
Horry County Transportation Committee  
Post Office Box 1236  
Conway, South Carolina 29538

RE: Informal Opinion

Dear Mr. Vereen:

Your opinion request has been forwarded to me for reply. You have asked whether members of the Horry County Transportation Committee may be compensated for out-of-pocket expenses and special meeting expenses. The members of the Committee have suggested \$50.00 per meeting for members and \$75.00 per meeting for the chairman. You have also asked whether members of other county transportation committees receive compensation for their service.

Section 12-28-2740 of the South Carolina Code of Laws governs the distribution of a portion of the gasoline tax, or "C" funds, among the counties and sets forth the procedures to be followed when establishing county transportation committees to expend these funds. County transportation committees are appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county. S.C. Code Ann. § 12-28-2740(B). Funds received by a county must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee. *Id.* A county transportation committee may also join in approving a regional transportation plan and the funds must be used in furtherance of this plan. *Id.* A county transportation committee is authorized to expend from the funds allocated under Section 12-28-2740 an amount not to exceed one thousand dollars for reasonable administrative expenses directly related to the activities of the committee. These expenses may include costs associated with copying,

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mailing, public notices, correspondence, and record keeping but do not include the payment of per diem or salaries for members of the committee. Id.

Compensation is not indispensable to a public office; it is merely incident to the office. 63C Am.Jur.2d Public Officer and Employees § 271. A public official is entitled only to compensation provided by law, for whatever may be the character of the compensation- whether an annual salary, a per diem allowance, or fees for particular services- it must depend upon the will of the people speaking through their constitutions, statutes, or ordinances. Id. The right to receive the compensation annexed to public offices is legislative or constitutional in nature; and, in this regard, it has been said that a public official is not entitled to receive payment for services out of the public treasury, unless there is some statute authorizing such payment. Id.

As a general rule, there is no constitutional right to receive compensation in any amount for public service; or, as is sometimes stated, there is no general constitutional requirement that every officer be compensated. Id. A law creating an office without any provision for compensation may carry with it the implication that the services are to be rendered gratuitously. Id.; See Ridgill v. Clarendon County, 188 S.C. 460, 199 S.E. 683 (1938).

The statute establishing and governing county transportation committees does not, at the present time, authorize the payment of salaries or per diem to members of these committees. In keeping with the above cited general law, the absence of such a provision implies that the members' service is gratuitous. Therefore, since there is no statutory authorization for the payment of salary or per diem to members of the committees, the committees are not permitted to compensate members for attending committee meetings.

The above stated conclusion is supported by the fact that Section 12-28-2740 only authorizes the expenditures of funds for transportation matters and limited administrative expenses. As to what constitutes administrative expenses, the General Assembly has expressly stated that funds expended for administrative reasons may not be used for the payment of per diem or salaries for members of the committee.

In regards to your question of whether members of other county transportation committees are receiving any form of compensation for their service, I am unaware of such an occurrence. However, I cannot speak with any degree of certainty on this subject.

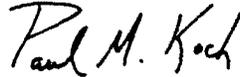
This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the

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specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Paul M. Koch".

Paul M. Koch  
Assistant Attorney General