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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

January 23, 1985

The Honorable Thomas M. Marchant, III
Member, House of Representatives
503B Blatt Building
Columbia, South Carolina 29211

Dear Representative Marchant:

You have requested the opinion of this Office as to questions pertaining to compensation paid to members of the Western Carolina Regional Sewer Authority Commission. You indicate that Commission members are presently receiving thirty-five (\$35.00) dollars per meeting; occasionally several meetings are scheduled for a single day, resulting in those Commission members in attendance receiving multiple thirty-five (\$35.00) dollar payments. Act No. 276, 1979 Acts and Joint Resolutions, and Act No. 515, 1980 Acts and Joint Resolutions, are the relevant statutes. Referencing the above, you have inquired:

1. Are Commission members allowed to receive \$35.00 per meeting, or are they limited to \$35.00 per day?
2. Should the Commission members not choose under Act 515 of 1980 either \$25.00 per meeting, the practice in effect when Act 515 passed, or \$35.00 per day?
3. If Commission members may be paid per meeting (either \$25.00 or \$35.00), is it proper to schedule and be paid for each of several consecutive meetings which are held on the same day?
4. If the present payment policy is improper, what should be done about overpayments that have been made to commissioners?

Following a general discussion of the applicable law, each of your questions will be addressed separately.

REQUEST LETTER

Act No. 276 of 1979 provides the following:

Notwithstanding any other provision of law, the members of the Western Carolina Regional Sewer Authority shall receive twenty-five dollars for each meeting attended. 1/

This Act became effective upon approval by the Governor on July 5, 1979 and thus was in effect at the time Act No. 515 was enacted in 1980.

Act No. 515 of 1980 has been codified as Sections 6-11-91, -92, and -93, Code of Laws of South Carolina (1983 Cum. Supp.). The relevant sections of the Act provide the following:

§ 6-11-91. Compensation and benefits for district governing bodies.

Notwithstanding any other provision of law the governing body of any public service district or special purpose district may by resolution or ordinance fix or change the compensation or other benefits including insurance benefits for the members of the district governing body. Compensation shall not exceed the amounts authorized for mileage for members of state boards, committees and commissions, insurance benefits shall not exceed those provided for state employees and per diem shall not exceed thirty-five dollars a day.

§ 6-11-92. Continuation of existing benefit plans.

Any public service district or special purpose district operating on the effective date of §§ 6-11-91 through 6-11-93 may continue to use the compensation or benefit plan now in existence on the effective date of §§ 6-11-91 through 6-11-93.

1/ There is some question as to whether this Act may violate Article VIII, Section 7 of the Constitution of the State of South Carolina. Because an act of the General Assembly is presumed to be constitutional until a court declares otherwise, this issue will not be addressed in this opinion. Bradley v. Hullander, 277 S.C. 327, 287 S.E.2d 140 (1982).

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Section 1 of the Act, codified as Section 6-11-91, has been interpreted by an opinion of this Office dated February 18, 1981, a copy of which is enclosed. The importance of that opinion with regard to your inquiry is that the terms "compensation" and "per diem" are deemed to mean the same thing and that a board or commission member would be limited to thirty-five (\$35.00) dollars per day under this section.

Section 2 of the Act, or Section 6-11-92, is relevant to your inquiry. Because the Western Carolina Regional Sewer Authority was operating on the compensation plan created by Act No. 276 of 1979, in operation at the effective date of Act No. 515 of 1980, applying the plain meaning of both acts and construing them together as in *pari materia*, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980); Bell v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944), it would appear that the Commission must elect either to operate under Act No. 276 of 1979 or to, by resolution, follow Act No. 515 of 1980, setting a per diem or compensation not to exceed thirty-five (\$35.00) dollars per day regardless of the number of meetings held on a given day.

With this background, the response to your questions will be presented.

Questions 1 and 2

As stated above, the Commission is entitled to continue following Act No. 276 of 1979, to receive twenty-five (\$25.00) dollars per meeting. Or, the Commission may opt, by resolution, to receive thirty-five (\$35.00) per day, regardless of the number of meetings held on a given day. There appears to be no authorization by statute to have the Commission elect to receive thirty-five (\$35.00) dollars per meeting.

Question 3

You have asked whether it would be proper to schedule and be paid for each of several consecutive meetings which would be held on the same day. No statute or act has been identified by this Office which would prohibit such scheduling of meetings and reimbursement for attendance at those meetings. Unquestionably, if each of these meetings were scheduled on a separate day, compensation would be paid without hesitation. Assuming that each meeting is readily identifiable as a separate function, there should be no difficulty in compensating Commission members in attendance. Good faith on the part of the Commissioners is presumed in setting the meetings and determining the agendas; lack of good faith, a question of fact, would possibly lead to a different answer to your question, but no evidence of bad faith has been presented to this Office.

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Question 4

This Office has not been furnished with documents to determine the extent, if any, to which Commission members may have been overcompensated; such determination of fact is not within the scope of this Office at any rate. If it should be determined that Commission members have been overcompensated, a court may well heed the South Carolina Supreme Court's dicta in addressing over-compensation of two public officials:

As the record shows that the defendants, Richardson and Butler, have, in good faith, performed the duties of their respective offices, and the State has received the benefit of their services, the value and efficiency of which are not questioned, it is but just and equitable that they should receive their salaries for all services rendered....

McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022 (1913). A court considering the issue would look at such criteria as good faith and whether the duties of the particular office have been performed. But see cases cited in Op. Atty. Gen. dated January 7, 1985; 67 C.J.S. Officers § 242.

We trust that the foregoing has responded satisfactorily to your inquiry. Please advise us if clarification or additional assistance is necessary.

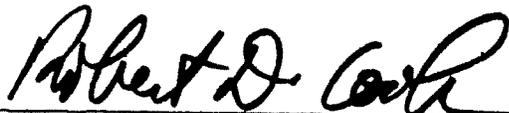
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP: ymk
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions