

1977 WL 37002 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 20, 1977

\*1 Mr. Harold E. Trask, Jr.  
Executive Assistant  
Office of the Governor  
Columbia, South Carolina 29211

Dear Mr. Trask:

You have inquired as to the proper amounts to be paid members of various boards, commissions and committees pursuant to the provisions of Sections 131 and 132 of the General Appropriations Act of the State for the fiscal year 1977-78:

Section 131 provides, in part:

'Members of committees appointed pursuant to acts and resolutions of the General Assembly whose membership consists solely of Members of the General Assembly or Members of the General Assembly and other personnel who are not employees of the State of South Carolina shall be allowed subsistence expenses of \$35.00 per day.'

The cited section further provides:

'Members of the State boards, commissions or committees, whose duties are not full time, and who are paid on a per diem basis, shall be allowed reimbursement for actual expenses incurred at the general daily rates provided for in this section while away from their places of residence on official business of the State.'

Section 131 also provides:

'All employees of the State—shall be allowed reimbursement for actual subsistence expenses incurred and paid, not to exceed \$25.00 per day while traveling in the State—.'

Section 132 provides, in part:

'That the per diem allowance of all boards, commissions and committees shall be at the rate of \$35.00 per day.'

The provisions set forth above contain ambiguities and are somewhat difficult to reconcile; however, they have existed in nearly the same verbiage for some years and a course of administrative procedures has been established in the application of such provisions.

In substance, it appears:

(a) State employees are entitled to reimbursement for actual expenses incurred, not to exceed \$25.00 per day within the State or \$30.00 per day without the State.

(b) Members of committees created by law whose membership consists solely of legislators or of legislators and non-legislators are allowed a subsistence expense of \$35.00 per day.

(c) Members of State boards, commissions or committees whose duties are not full time and who are paid on a per diem basis are allowed reimbursement for actual expenses incurred at the general daily rates provides.

In my opinion, this has reference to the proviso in Section 131, relating to employee subsistence expenses, because that is the only general daily rate referred to in that section. Therefore, the reimbursable expenses provided is a maximum of \$25.00 per day.

The difference between the allowable amounts provided is that State employees are paid, to the allowable maximum, the amount of actual expenses incurred; committees whose membership contains Members of the General Assembly and non-legislative Members are allowed subsistence expenses of \$35.00 per day, and an accounting for the incurrence of such expenses is not required; and members of State boards, commissions or committees whose duties are not full time and who are paid on a per diem basis are reimbursed for actual expenses incurred, with a maximum of \$25.00, as in the case of State employees generally.

\*2 In addition to subsistence expenses allowed as set forth above, a per diem allowance is fixed for all boards, commissions or committees at the rate of \$35.00 per day. This is payable to legislators without, in my opinion, infringing upon the provisions of Article III, Section 9, of the State Constitution. The basis for this conclusion is the case of [Scroggie v. Bates](#), 213 S.C. 141, 48 S.E.2d 634, which invalidated an attempt by the General Assembly to provide an amount of \$700.00 for each of its Members 'as official expenses.' In doing so, the Supreme Court of South Carolina stated: 'There is no question that the General Assembly may provide for the payment of expenses of its Members in performing duties imposed upon them by statute—as exemplified by—.'

The Court, in the foregoing statement, referred only to the payment of 'expenses' but the statutes cited in exemplification of its holding each provided not only travel allowances for legislative members but also provided for a per diem payment: 'They shall receive as compensation for their services \$7.50 per day for the number of days actually engaged in the performance of the duties imposed by this article and their actual traveling expenses—.'

'Each member of the committee shall receive his traveling expenses and a per diem of \$10.00 per day—.'

'And for such meetings, the members of the committee shall receive as compensation each a per diem of \$5.00 and the same mileage they received for attendance upon the sessions of the General Assembly.'

The Court added further the following comment, which indicates its awareness of the fact that they had not overlooked the provision for per diem and expenses of legislative members:

The above enactments of the Code indicate that where any statutory duty is imposed upon the Members of the General Assembly when not in session, the statute carries with it a provision for the payment of official expenses or a per diem and expenses.'

While its foregoing statements may be considered *obiter dicta*, they were deliberately set forth by a court consisting of special members who had no previous legislative service and, in my opinion, is a recognition that expenses and per diem, when, within reasonable limitations, may be provided for Members of the General Assembly for work required of them by statutory directive.

The question presented, however, is not free from doubt. Some question may exist in consideration of the fact that committee members and State employees generally are entitled only to reimbursement for actual expenses, which contemplates the necessity for itemization of expenses, whereas committees composed of legislators or legislators and non-legislators are allowed a flat amount for subsistence expenses without the requirement that such expenses be actually incurred. Such a situation was alluded to in [Scroggie v. Bates](#) in Syllabus 17 thereof. It is my opinion, however, that the conclusion is not inevitable, as it was

in Scroggie v. Bates; that the real intent and purpose of the enactments was to increase the compensation or per diem of the General Assembly, in violation of the Constitution. Such a conclusion is not indicated in the circumstances here considered.

\*3 In my opinion, therefore, the payments provided for legislative members consisting of subsistence allowances and per diem are not unconstitutional.

Very truly yours,

Daniel R. McLeod  
Attorney General

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