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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

August 1, 1994

The Honorable J. P. Hodges, Chairman
Board of Probation, Parole, and
Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250

Dear Mr. Hodges:

By your letter of June 29, 1994, you have advised that a full-time employee of Horry-Georgetown Technical College has been appointed to fill a vacancy on the Board of Probation, Parole, and Pardon Services, hereinafter referred to as the "Board." Pursuant to Budget and Control Board approval, a Board member receives a hearing fee and a per diem for attending parole and pardon hearings. Per diem is also paid for required training and preparation for a hearing. Additionally, a Board member receives actual expenses in accordance with state law and policy.

You have therefore sought the opinion of this Office as to whether an individual who is both a full-time employee of Horry-Georgetown Technical College and a Board member can receive the hearing fee of \$300.00 per day for attendance at parole and pardon hearings.

The Board of Probation, Parole, and Pardon Services is now established pursuant to S.C. Code Ann. § 24-21-10 (1993 Cum. Supp.), which was amended by governmental restructuring in 1993. As to compensation of Board members, § 24-21-12 provides:

The members of the board shall draw no salaries, but each member shall be entitled to such per diem as may be authorized by law for boards, commissions, and committees, plus actual and necessary expenses incurred pursuant to the discharge of official duties.



REQUEST LETTER

The Honorable J. P. Hodges
Page 2
August 1, 1994

The amount of per diem paid to members of boards, commissions, and committees is set annually in the appropriations act. Currently that amount is \$35.00. It is observed that members of the Board are not to draw salaries.

Section 129.36 of the 1994-95 Appropriations Act provides:

The per diem allowance of all boards, commissions and committees shall be at the rate of Thirty-five (\$35) Dollars per day. No full-time officer or employee of the State shall draw any per diem allowance for service on such boards, commissions or committees.

According to your letter and also considering § 59-53-20, the employee is a full-time state employee. Thus, the individual is not entitled to draw a per diem allowance.

Finally, in the annual appropriations acts for the last several years, a proviso within the Department of Probation, Parole, and Pardon Services has provided for a hearing fee. Typical is proviso 44.1 of Act No. 164 of 1993, the 1993-94 Appropriations Act:

The Department of Probation, Parole and Pardon Services shall receive a hearing fee under a plan approved by the Budget and Control Board.

It is our understanding that the Budget and Control Board has authorized a "hearing fee" of \$300.00 per day for parole and pardon hearings, with the chairman of the Board authorized to receive \$325.00 per day.

Exactly what the "hearing fee" is intended to be must be resolved to determine whether a full-time state employee would be entitled to receive it. A definition of "per diem" is found in Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596 (1931): "Generally, the term 'per diem,' as used in connection with compensation, wages, or salary, means pay for a day's services" 162 S.C. at 226. Clearly, the \$35.00 per day is per diem. The "hearing fee" is also calculated on a daily basis for services rendered, which gives such fee an indication of being "pay for a day's services," as stated in Scroggie, particularly since § 24-21-12 proscribes drawing of salaries by Board members. If such is deemed per diem, proviso 129.36 of the 1994-95 Appropriations Act would prohibit its receipt by a full-time state employee.

The Honorable J. P. Hodges

Page 3

August 1, 1994

Conclusion

It would appear that, since the hearing fee is calculated on a daily basis and further since Board members are prohibited from being paid salaries, the "hearing fee" is a form of per diem. Thus, a full-time state employee would most probably be prohibited from receiving that fee as a form of per diem.

Today's opinion decides only the narrow issue presented, that of whether a full-time state employee may receive the hearing fee as set forth above, and is not intended to examine the interplay of the various provisos and statutes referred to above, as to members of the Board who are not full-time state employees.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions