

4363 Liberty

The State of South Carolina



Office of the Attorney General

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December 20, 1990

The Honorable McKinley Washington, Jr.
Senator, District No. 45
Post Office Box 247
Ravenel, South Carolina 29470

Dear Senator Washington:

You have advised our Office of your understanding that a substantial number of persons have been subpoenaed to appear as witnesses by the Board of State Canvassers in a matter pending before that body. You have further advised that some of these witnesses will be required to take time off from work and travel great distances to comply with their subpoenas. You have therefore asked whether the Board of State Canvassers is authorized to reimburse these witnesses for the actual travel costs incurred in attending the hearing. If the Board of State Canvassers possesses this authority, you then asked whether it is inconsistent with public policy to expend public funds for this purpose.

The Board of State Canvassers (otherwise known as the State Election Commission), as any administrative agency, derives its authority and jurisdiction from the statutes creating it; its powers include those expressly granted by statute and those powers necessarily and reasonably implied therefrom. 1 Am.Jur.2d Administrative Law §§ 72, 73, 91. One such statute is S.C. Code Ann. § 7-17-270 (1976), which provides in part:

The Board [of State Canvassers], acting in a judicial capacity, shall hear the [election] protest or contest

... The chairman of the Board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses [Emphasis added.]

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This statute does not expressly authorize that subpoenaed witnesses be reimbursed for expenses incurred in complying with the subpoenas. However, the Board of State Canvassers, acting in its judicial capacity, is statutorily required to adhere to procedures observed by the circuit courts of this State. Rule 45 of the South Carolina Rules of Civil Procedure dictates the procedures that relate to the subpoenaing of witnesses. This Rule provides in subsection (g):

A witness subpoenaed to attend upon trial or hearing under these Rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same \$25.00 per day, and mileage in the same amount as provided by law for official travel of State officers and employees.

At the very least, this Rule provides guidance to the Board of State Canvassers both in its determination whether to reimburse witnesses who incur expenses as a result of being compelled to attend a Board hearing and the level of reimbursement that is reasonable.

Moreover, this Office in an opinion rendered by former Attorney General Daniel R. McLeod concluded that an administrative agency vested with the authority to subpoena witnesses to compel attendance at hearings conducted by it was implicitly authorized to expend funds to pay witness fees and travel costs. See Op. Atty. Gen. dated September 29, 1960 (copy enclosed). Attorney General McLeod's opinion advised that the agency could provide fees and travel costs in excess of those provided by law for witnesses required to attend proceedings in the circuit court provided that the reimbursement was "reasonable." I caution, however, that because of the specific reference to and incorporation of the "procedures ... observed by the circuit courts of this State" provided in § 7-17-270, the Board of State Canvassers should not authorize reimbursement to witnesses that exceeds those amounts prescribed by the Supreme Court in Rule 45.

The provision of reasonable witness fees and travel costs in order to reimburse those witnesses compelled to attend administrative hearings is consistent in all respects with public policy. It is the duty of every witness to attend judicial proceedings when commanded to do so, in order to aid in the administration of justice. Considerations of personal convenience or preference are generally subordinated to the needs of the judicial forum. 81 Am.Jur.2d Witnesses § 5. The provision of nominal witness fees and reimbursement for witnesses' required travel costs facilitates the administration of justice and subserves the public interest by lessening the financial burdens imposed upon the persons compelled to attend and testify. Not only do the courts of this State routinely provide fees and expenses for witnesses, but also many of the

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administrative agencies that conduct judicial-type proceedings also provide this reimbursement. For example, the Supreme Court authorizes a ten-dollar (\$10.00) fee and travel costs reimbursed for those witnesses compelled to attend attorney disciplinary hearings, see Attachment A, and a fifteen-dollar (\$15.00) fee and travel reimbursement for witnesses who are required to attend Judicial Standards hearings, see Attachment B. The State Board of Medical Examiners allows a twenty-dollar (\$20.00) fee and travel reimbursement for witnesses appearing before the Disciplinary Panel of that Board, see Attachment C.

We advise that, consistent with public policy and accepted practice, it is appropriate to provide reasonable reimbursement to these witnesses. This lessens the financial burdens that in many cases are significant^{1/} and subserves the administration of justice. We would encourage the Board of State Canvassers to authorize a reasonable reimbursement to witnesses compelled to attend its hearings, provided that the fees do not exceed those prescribed by the Supreme Court.


With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure
Attachments

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

^{1/} We understand that the Board of State Canvassers intends to conduct the referenced hearing in Columbia and further that most, if not all, of the subpoenaed witnesses will be required to travel to Columbia from Charleston County. In addition, this proceeding will be conducted on a weekday, a usual workday. Thus, many witnesses will be required to be absent from their regular employment for the day. We do not dismiss these financial hardships incurred as a result of complying with these subpoenas as insignificant.