

1983 WL 181746 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1983

*1 Francis E. Lewis, ACSW
Executive Director
The Children's Bureau of South Carolina
1001 Harden
Suite 225
Columbia, South Carolina 29205

Dear Mr. Lewis:

You have requested an opinion as to whether § 137 of the general provisions of the Appropriations Act for 1982-83 requires that travel and subsistence reimbursements be made to state employees, or whether individual agencies have discretion to reduce or eliminate such reimbursements.

The initial paragraph of § 137 and subsection (A) thereof provide that reimbursement for such expenses 'shall' be made. Similarly, subparagraph (J) provides that where an employee's personal automobile is used, the stated mileage charge 'will be allowed . . .'. In contrast to this language, subsection (K), in addressing the question of advancements for travel expenses before the travel occurs, provides that an agency 'may advance' expenses in such situations, but that such advancements 'shall be repaid' to the agency within 6 months.

The general meaning of the term 'shall' is that it refers to compulsory or imperative duties, while the word 'may' refers to optional or discretionary duties. In the opinion of this office, the context in which the words are used in § 137 of the above Act leaves no doubt that the General Assembly intended, by using the word 'shall,' to require the agencies to make full reimbursement as provided by statute whenever appropriate travel expenses are incurred.

Sincerely yours,

Frank K. Sloan
Chief Deputy Attorney General

ATTACHMENT

SEC. 137. Travel and subsistence expenses, whether paid from State appropriated. Federal, local or other funds, shall be allowed in accordance with the following provisions:

A. Unless otherwise provided in paragraphs B through H of this section, all employees of the State of South Carolina or any agency thereof including employees and members of the governing bodies of each technical education center while traveling on the business of the State shall, upon presentation of a paid receipt, be allowed reimbursement for actual expenses incurred for lodging. The employee shall also be reimbursed for the actual expenses incurred in the obtaining of meals except that such costs shall not exceed \$12 per day, except in urban areas outside of South Carolina with populations in excess of 250,000, in which case the maximum daily reimbursement for meals shall not exceed \$20. It shall be the responsibility of the agency head to monitor the charges for lodging which might be claimed by his employees in order to determine that such charges are reasonable taking into consideration location, purpose of travel or other extenuating circumstances. The provisions of this item shall not apply to [Section 42-3-40 of the 1976 Code](#).

B. That employees of the State, when traveling outside the United States, Canada and Puerto Rico upon promotional business for the State of South Carolina shall be entitled to actual expenses for both food and lodging.

*2 C. The Governor, Lieutenant Governor, Secretary of State, Comptroller General, Attorney General, State Treasurer, Adjutant General, Superintendent of Education and the Commissioner of Agriculture shall be reimbursed actual expenses for subsistence.

D. Non-legislative 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 per day while traveling on official business. Members of such committees may opt to receive actual expenses incurred for lodging and actual expenses incurred in the obtaining of meals in lieu of the allowable subsistence expense.

E. 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 rates provided in Paragraph A and I of this Section while away from their places of residence on official business of the State. One person accompanying a handicapped member of a State Board, Commission, or Committee on official business of the State shall be allowed the same reimbursement for actual expenses incurred at the rates provided in Paragraph A through I of this Section.

F. No subsistence reimbursement shall be allowed to a Justice of the Supreme Court while traveling in the county of his official residence. When traveling on official business of said court within 50 miles outside the county of his official residence, a Supreme Court Justice shall be allowed subsistence expenses in the amount of \$35 per day plus such mileage allowance for travel as is provided for other employees of the State. When traveling on official business of said Court 50 or more miles outside the county of his official residence, each justice shall be allowed subsistence expenses in the amount of \$50 per day plus such mileage allowance for travel as is provided for other employees of the state. The Chief Justice, or such other person as he designates, while attending the Conference of Chief Justices and one member of the Supreme Court while attending the National Convention of Appellate Court Judges, and three Circuit Judges while attending the National Convention of State Trial Judges shall be allowed actual subsistence and travel expenses.

G. No subsistence reimbursement shall be allowed to a Circuit Judge or a Family Court Judge while holding court within the county in which he resides. While holding court or on other official business without the county in which he resides but within his circuit, a Circuit Court Judge or Family Court Judge shall be entitled to a subsistence allowance in the amount of \$35 per day. While holding court or on other official business outside his circuit, a Circuit Court or Family Court Judge shall be entitled to a subsistence allowance in the amount of \$50 per day.

*3 H. Any retired justice, circuit court judge or family court judge appointed by the Supreme Court to serve as a special circuit judge, family court judge or acting associate justice shall serve without pay but shall receive the same allowance for subsistence, expenses, and mileage as provided in Part I for circuit court judges.

I. No expense shall be allowed an employee either at his place of residence or at the official headquarters of the agency by which he is employed except as provided in paragraph E of this section. When an employee is assigned to work a particular territory or district, and such territory or district and his official headquarters are in different localities or sections of the State, expenses may be allowed for the necessary travel to his official headquarters. *Provided, however, that the members of the Public Service Commission and the Employment Security Commission may be reimbursed at the regular mileage rate of one round trip each week from their respective homes to Columbia. No subsistence reimbursement shall be allowed to a member of the Public Service Commission or the Employment Security Commission while traveling in the county of his official residence. When traveling on official business of the Commission within 50 miles outside the county of his official residence, a member of the Public Service Commission or the Employment Security Commission shall be allowed subsistence expenses in the amount of*

\$35 per day. When traveling on official business of the Commission 50 or more miles outside the county of his official residence, each member shall be allowed a subsistence expense in the amount of \$50 per day.

J. When an employee of the State shall use his or her personal automobile in traveling on necessary official business, a charge of 23 cents per mile will be allowed for the use of such automobile and the employee shall bear the expense of supplies and upkeep thereof. When such travel is by a State-owned automobile, the State shall bear the expense of supplies and upkeep thereof but no mileage will be allowed. Agencies are requested to effect a reduction in the number of miles traveled to provide necessary funds for the essential travel. *Provided*, That in traveling on the business of the State, employees are required to use the most economical mode of transportation, due consideration being given to urgency, schedules and like factors.

K. That a State agency may advance travel and subsistence expense monies to employees of that agency for the financing of ordinary and necessary travel required in the conducting of the business of the agency. The Budget and Control Board is directed to develop and publish rules and regulations pertaining to the advancing of travel expenses and no State agency shall make such advances except under the rules and regulations as published. *Provided*, All advances for travel and subsistence monies shall be repaid to the agency within six months.

L. The State Budget and Control Board is authorized to promulgate and publish rules and regulations governing travel and subsistence payments which shall be effective July 1, 1982.

1983 WL 181746 (S.C.A.G.)