

1981 WL 157931 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 25, 1981

***1** Honorable William T. Putnam
Executive Director
State Budget and Control Board
Wade Hampton Office Building
Columbia, South Carolina

Dear. Mr. Putnam:

The Budget and Control Board is in the process of issuing amended travel and subsistence regulations to comply with the 1981-82 Appropriations Act. Section 135(F) thereof provides in pertinent part:

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.

You have inquired as to the proper interpretation of this Section, so that the Board may eliminate in the regulations the apparent confusion in the language of Section 135(F).

Where, as here, there is ambiguity in the language of a statute it is proper to resort to the rules of statutory construction to determine the legislative intent. Sutherland, Statutory Construction, Section 45.02. Here the ambiguity arises from using the words 'county of official residence' when measuring distance. If the residence considered to measure mileage is from a residence other than a Justice's actual place of residence, one Justice may find that he is travelling 60 or 70 miles from his residence but his destination is less than 50 miles outside his county line, hence his subsistence allowance could be \$35 per day; while another Justice might travel only 51 or 52 miles from his residence but, because he lives close to the county line, his subsistence allowance would be \$50 per day. This is an absurd result which the legislature is presumed not to intend. [Moore v. Waters](#), 148 S.C. 326, 146 S.E. 92.

Under the rules of statutory construction contemporaneous and practical interpretation provide a valuable aid in determining the meaning of a doubtful statute. Sutherland, Section 49.03; Palmore v. U.S., 419 U.S. 389 (1973). A second rule of equal importance is that all parts of a statute must be able to give effect to the legislative intent. Sutherland, Section 51.02; [Smith v. State Highway Department](#), 138 S.C. 374, 136 S.E. 487 (1927).

Applying these rules, it will be noted that the practical interpretation of our statutes referring to mileage and substance has always been that residence' refers to the actual place of residence. The words 'home' and place of residence' are used in other sub-sections of Section 135 itself e.g., sub-section I) when measuring mileage. In the opinion of this Office, the statute should be construed such that, for purposes of measuring mileage in sub-section F, the point of departure is the actual 'place of residence' of the justice.

***2** In accordance with your request, we attach a proposed draft of paragraph of the Board's travel regulations which, in our opinion, would apply the statute in a manner consistent with the legislative intent.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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