

1979 WL 43463 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 12, 1979

*1 Mr. Steve K. Good
Director
Accounting and Personnel
S.C. Judicial Department
P. O. Box 11330
Columbia, SC 29211

Dear Mr. Good:

You have requested the opinion of this Office to reconcile the provisions of South Carolina Code of Laws, 1976, Sections 14-27-60 and 14-27-80 and the State Appropriations Bill of 1978-1979 Part I, Section 136 and 137 as they relate to the Judicial Council. The Judicial council is comprised of members of the Supreme Court and other courts of the State, members of the General Assembly, various State officials and private citizens. The members of the judicial, executive and legislative branches who are designated by statute to serve on the Judicial Council serve on the council as a part of the duties of their offices. Section 14-27-80. You ask the appropriate manner to reimburse the members of the Council.

Section 14-27-60 states that the members of the Council 'shall be entitled to draw the per diem and mileage allowed State officials and employees.' Generally, the term 'per diem' when used in the phrase 'per diem and mileage' implies a fixed amount rather than actual expenses. See, [Gallarno v. Long, 214 Iowa 805, 243 N.W. 719](#). Section 14-27-60 was passed in 1957, at which time State employees were compensated in a fixed amount of \$7.50 per day (called subsistence expenses) and received compensation for mileage and members of boards and commissions were given an allowance of \$10.00 per day (called a per diem), and no officer or employee of the State was permitted to draw a per diem for service on such boards or commissions. Act No. 347, of 1957, Sections 79, 80. No mileage was included in the compensation of members of boards or commissions, whereas mileage was allowed for State employees. Then, in 1957, 'the per diem and mileage allowed State officials and employees' was intended to distinguish the compensation of the members of the Judicial Council from the per diem allowed to members of other boards and commissions. The legislative intention, therefore, was to compensate the members of the council in the same manner as State employees, perhaps because most of the members of the Council are employed by the State and therefore would not have been permitted to draw the per diem allowed boards and commissions.

In the current Appropriation Act, State employees are given compensation for actual expenses for meals (to a specified limit) and lodging (called subsistence) along with a fixed rate for mileage. Members of boards and commissions are given a flat per diem. Again, State employees who are members of such boards and commissions are not entitled to the per diem. Act No. 644 of 1978, Sections 136, 137.

It is a general rule of statutory construction that statutes dealing with the same subject should be construed in pari materia. 2A Southerland, Statutory Construction, § 51.01. Here, the express reference by the Legislature in Section 14-27-60 to the terms of other legislation in order to fix the compensation of the council provides additional assurance that the legislative intention was to compensate members of the council in the same manner as State employees as distinguished from the payment given to board and commission members.

*2 Therefore, it is the opinion of this Office that members of the Judicial Council should be compensated in the same manner as State officials and employees. The precise nature and amount of such compensation may be determined by reference to the Appropriations Act of any particular year.

I hope this has been of some assistance to you. If you have any further questions, please do not hesitate to contact me.
Very truly yours,

Katherine W. Hill
Assistant Attorney General

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