

1973 WL 26786 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 22, 1973

***1 Re: Employee expenses**

Miss Ira Dean Lane, R. N.
Executive Director
State Board of Nursing for South Carolina
2711 Middleburg, Drive
Suite 216
Columbia, South Carolina 29204

Dear Miss Lane:

Inquiry has been made by you on behalf of the State Board of Nursing concerning the authority of the Board to authorize the rental of parking spaces near the offices of the Board for use by Board employees, and to authorize the payment of the actual travel expenses of employees incurred in the performance of their duties, without regard to per diem rates applicable to State employees generally.

The payment of salaries and expenses of employees of the State Board of Nursing is authorized by Section 56-965, S. C. Code of Laws (1962), as follows:

. . . The salaries of employees and necessary expenses incurred in the performance of their duties shall be paid out of funds held by the Board on the approval of the president of the Board.

The operation of the State Board of Nursing is funded by fees collected by the Board through the exercise of powers granted by the Legislature. These revenues are remitted to the State Treasurer, credited to a special account (not the General Fund), and are then drawn on by the Board to meet expenses. Responsibility for making these disbursements, and the procedures to be followed, are defined by State Board of Nursing Regulation No's. 2 & 3.

The first question presented is whether the Board may rent parking spaces for the use and convenience of its employees. Section 89 of the 1972 South Carolina General Appropriations Act, 1972 Acts at 3004, provides:

Salaries paid to officers and employees of the State, including its several boards, commissions, and institutions shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or effect of increasing the compensation of said officer or employee; . . .

This law is temporary in nature, having force and effect only for the fiscal year 1972-73. However, during the period of its application this law, being a directive of the Legislature, supercedes permanent legislation, such as Section 56-965, S. C. Code of Laws (1962), insofar as there is any conflict. [Buchanan v. State Treasurer](#), 68 S.C. 415, 47 S.E. 683 (1904). Accordingly, it is the opinion of this office that the Board may not authorize the rental of parking spaces for use by its employees. Parking privileges which automatically accrue from the lease of office space should be utilized equitably.

The second question to consider is whether Board employees under the authority of Section 56-965, S. C. Code of Laws (1962), may be paid their actual expenses incurred while traveling on official business. Section 91 of the 1972 South Carolina General Appropriations Act, 1972 Acts at 3005, provides:

*2 All employees of the State of South Carolina or any agency thereof while traveling on the business of the State shall be allowed reimbursement for actual subsistence expenses incurred and paid not to exceed \$15.00 per day while traveling in the State and \$18.50 per day while traveling outside the State, . . .

Whenever officials or employees of the State are required, in the performance of their official duties, to travel to Cities of two hundred fifty thousand (250,000), or greater population, such official or employee shall be allowed reimbursement for actual expenses incurred not to exceed \$21.00 per day.

. . .

When an employee of the State shall use his or her personal automobile in traveling on necessary official business, a charge of ten cents per mile will be allowed for the use of such automobile, and the employee shall bear the expense of supplies and upkeep thereof.

For reasons heretofore stated, it is the opinion of this office that this provision of the 1972 Appropriations Act supercedes Section 56-965, S. C. Code of Laws (1962), insofar as there is any conflict. Moreover, it is the opinion of this office that even without the temporary provisions of Section 91, supra, that 'necessary expenses' as permitted by Section 56-965 must be construed in terms of those rates viewed as within the bounds of necessity by the State generally. Accordingly, by law actual expenses incurred by employees of the State Board of Nursing may be paid up to, but not exceeding, those per diem levels specified by Section 91 of the 1972 South Carolina General Appropriations Act, or by similar laws subsequently to be enacted.

If there are questions, please correspond. With best wishes, I am

Sincerely,

John B. Grimball

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