

1973 S.C. Op. Atty. Gen. 246 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3588, 1973 WL 21043

Office of the Attorney General

State of South Carolina

Opinion No. 3588

August 2, 1973

***1 Re: State Highway Commissionera, Per Diem, subsistence, and Travel Expense, Right to.**

Honorable William T. Brooks
Secretary-Treasurer
State Highway Department
1100 Senate Street
Post Office Box 191
Columbia, South Carolina 29202

Dear Mr. Brooks:

You have inquired whether or not members of the State Highway Commission are entitled to receive salary, per diem, subsistence, and expense of travel.

Section 33–35, 1962 Code of Laws, as amended, provides that members of the State Highway Commission, except the Chief Highway Commissioner, whose salary is somewhat higher and whose duties are full time, shall receive annual salaries of \$300.00.

Section 94 of the 1973–74 General Appropriations Bill provides that the per diem allowance of boards, commissions and committees shall be at the rate of \$25.00 per day.

The Secretary ex officio of the Budget and Control Board, Hon. Pat C. Smith, informs me that it has been the interpretation of the Board for a number of years that no board or commission member for whom a salary is provided by law is entitled to per diem. With the ambiguity in the relevant statutes, administrative interpretation and practice by the Board bears much weight, and, in the present case, is, in my opinion, controlling.

Section 92 of the Bill, paragraph 5, provides that members of commissions shall receive reimbursement for travel on State business at the same rate as that paid to employees of the State. Again, there is restrictive language in this paragraph, i.e., 'who are paid on a per diem basis' in line 2 that could be construed to exclude State Highway Commissioners from its provisions. The Board, however, construes this paragraph to apply to all boards and commissions, whether paid an annual salary or on a per diem basis.

In view of the foregoing, it is the opinion of this office that Highway Commission members, except the Chief Highway Commissioner, are entitled to receive a salary of \$300 per annum, but not the \$25.00 per diem, and that they are entitled to be reimbursed for actual expenses on State business while away from their places of residence at the maximum rates for subsistence and travel provided for State employees.

This opinion supersedes previous opinions of this office on the same subject, particularly those of June 11, 1973, addressed to Hon. Kenneth L. Holland, May 16, 1973, addressed to Hon. W. T. Brooks, May 8, 1973, addressed to Hon. W. T. Brooks, and May 1, 1973, addressed to Hon. W. T. Brooks.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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