



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

July 10, 1975

ATTORNEY GENERAL OPINION NO. 75- 279

Mr. Anthony D. Lopez  
Executive Director  
Commission On Civil Rights  
535 Kansas Avenue - 5th Floor  
Topeka, Kansas 66603

Re: Public Officers--Commission on Civil Rights--  
Compensation

Synopsis: Members of the Kansas Civil Rights Commission may be paid only for attendance at meetings of the Commission and of duly authorized subcommittees, and not for other time spent in the performance of official duties.

\* \* \*

Dear Mr. Lopez:

You advise that since adoption of a policy providing therefor on July 13, 1972, the Kansas Commission on Civil Rights has authorized compensation for commissioners for attending Commission meetings and for certain other official duties they are required to perform. Specifically, you indicate, this policy provided that "the commissioners be paid for services rendered for reading time, conciliation efforts and legal efforts."

At the time this policy was adopted, K.S.A. 44-1003 provided in pertinent part thus:

"Each member of the commission shall receive as compensation for his services, the sum of twenty-five dollars (\$25) per day for each day actually spent in the discharge of his official duties: Provided, This limitation shall not apply to any expenses actually incurred by any member in traveling to and from

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the sessions of the commission or during the actual attendance of the same; nor to the necessary and actual expense incurred by any such member in the performance of his official duties as provided and set forth in this act."

Effective July 1, 1974, this language was repealed. K.S.A. 1974 Supp. 44-1003 now provides in pertinent part thus:

"Members of the commission on civil rights attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in section 1 [75-3223] of this act."

The referenced statute, now appearing as K.S.A. 1974 Supp. 75-3223, provides in pertinent part as follows:

"(a) Whenever it is provided by law that a member of a board is to receive compensation as provided in this section, such member shall be paid per diem compensation of thirty-five dollars (\$35) for each day of actual attendance at any meeting of such board or any subcommittee meeting authorized by such board." [Emphasis supplied.]

Thus, the only section of the Kansas Act Against Discrimination which authorizes compensation for members of the Commission is now K.S.A. 1974 Supp. 44-1003, which allows compensation only for "attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission." That compensation, as well as subsistence allowances, mileage and other expenses, may be paid only as authorized by K.S.A. 1974 Supp. 75-3223, and it in turn authorizes per diem compensation only of "thirty-five dollars (\$35) for each day of actual attendance" at a meeting of a board or commission or subcommittee thereof.

In the material you enclose, it is urged that the policy of paying commissioners for work done other than in attendance upon commission

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meetings themselves. For example, K.S.A. 1974 Supp. 44-1005, in effect during the year in question, provides thus:

"After the filing of any complaint . . . the commission . . . shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of the alleged act of discrimination. If such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, he shall, within ten (10) days from such determination, cause to be issued and served upon the complainant written notice of such determination.

"If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the said commissioner or such other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation." [Emphasis supplied.]

K.S.A. 44-1003, as quoted above, formerly authorized each commissioner to receive compensation "for his services," at the rate of a specified sum "for each day actually spent in the discharge of his official duties . . ." a legislative recognition, perhaps, that commissioners perform official tasks under the Act other than in an assembled formal body. With the repeal of this language, however, whatever labors individual commissioners perform under the Act other than in formal assembly is noncompensable under K.S.A. 1974 Supp. 44-1003 as quoted above.

Secondly, it is urged that the approval of certain budget requests constitutes authority for the compensation in question here. The budget requests included a line item request which was computed and stated so as to provide funds to pay commissioners for duties performed in investigation, conciliation and the like, and it is urged that appropriation of these funds constitutes authority for the payments claimed here. We have reviewed the appropriation language found at ch. 13, § 3, ch. 17, §§ 4 and 49, and ch. 19, § 31, L. 1974, and find no language whatever from which it may be inferred that either K.S.A. 1974 Supp. 44-1003 or 75-3223 were intended to be amended or repealed either expressly or impliedly.

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Legislation action upon a budget request will rarely, if ever, be deemed to amend clear and unambiguous substantive law by alleged tacit approval of or acquiescence in language contained in that budget request, when that language is not itself incorporated into substantive law or included in the appropriation bill itself. Whatever funds may have been appropriated, the authority for payment of compensation out of those appropriated funds remains that afforded by K.S.A. 1974 Supp. 44-1003 and 75-3223.

Thirdly, it is urged that the sole purpose of section 1 of 1974 House Bill 1624, now found at K.S.A. 1974 Supp. 75-3223, was to establish a uniform rate of compensation for attendance at meetings. We cannot but agree that such is the effect of the amendment. K.S.A. 1974 Supp. 44-1005 goes further, however, to restrict compensation of Commission members to per diem rates of pay for attendance at meetings, a clear and distinct legislative change from the method of compensation for commission members in effect theretofore. Indeed, there is no present statutory authority whatever for payment of compensation to commission members for other than attendance at meetings of the Commission and subcommittees thereof which are duly authorized by the Commission.

To respond to your specific question, you ask whether the 1974 amendments

"mean we cannot pay Commissioners who are assigned to cases for investigation an hourly rate for duties perform [sic] based upon prior Commission policy with both the executive and legislative branches of Kansas government [sic] approval of these funds being used in this manner."

The question, in courtroom jargon, assumes a fact not in evidence; the clear language of the two statutes in question constitutes express legislative disapproval of payment of compensation to Commission members for other than attendance at meets as stated above.

You are correct that K.S.A. 44-1003 limits the daily amount paid for attending Commission meetings to the days in actual attendance.

Lastly, you ask thus:

"Didn't the 1974 Kansas Legislature wish to establish uniformity in the payment of com-

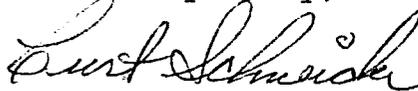
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pensation to appointed state officials rather than to request they perform a working function with daily demands without adequate compensation."

We can only respond to this question by referring you to the statutory enactments of the 1974 Legislature cited above. We are advised that in fixing the rate of per diem compensation in section 1 of 1974 House Bill 1624, it was considered that the honor of public service was compensation enough for any financial sacrifice that service entailed. Although this consideration has been less and less influential in recent years in the fixing of legislative salaries, it seems to have prevailed in the fixing of compensation for members of important state regulatory and administrative boards and commissions.

We reiterate the interpretation of K.S.A. 1974 Supp. 44-1003 and 75-3223 as stated in our Opinion No. 75-49, and cannot but concur in its application in this instance by the Division of Accounts and Reports.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:jj

cc: Mr. James R. Cobler, Director  
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