ATTORNEY GENERAL OPINION NO. 75-349

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

Re: Witnesses--Fees

Synopsis: Persons subpoenaed by the Kansas Commission on Civil Rights are entitled to witness fees and mileage prescribed by K.S.A. 28-125 for witnesses in proceedings in district courts.

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Dear Mr. Lopez:

You inquire concerning the payment of witness fees, mileage and subsistence to witnesses appearing at hearings held by or under the authority of the Kansas Commission on Civil Rights. The question is prompted, we understand, by the chief auditor of the administrative audit section of the Division of Accounts and Reports, concerning a voucher submitted for mileage, totalling $147.94, per diem allowance of $87.50, and witness fees of $5.00, payable to one Duane McCrary, of Madison, Wisconsin, in the matter of McCrary v. Smalley.

The power of the Commission to issue subpoenas for the attendance of persons is, of course, entirely statutory, as is the authority of the Commission to pay fees and any other allowances to persons so subpoenaed. K.S.A. 1974 Supp. 44-1005 provides in pertinent part thus:

"The complainant or respondent may apply to the commission for the issuance of a subpoena for the attendance of any
person or the production or examination
of any books, records or documents perti-
nent to the proceeding at the hearing.
Upon such application the commission shall
issue the subpoena."

When, of course, the Commission is itself the complainant, it
may issue subpoenas for persons whose attendance it requires.
K.S.A. 44-1020(b) states thus:

"Witnesses summoned by subpoena of the
commission shall be entitled to the same
witness and mileage fees as are allowed
witnesses in proceedings in district courts.
Fees payable to a witness summoned by a sub-
poena issued at the request of a respondent
shall be paid by said respondent."

Witness fees and mileage allowances for witnesses in proceedings
in district courts are fixed by K.S.A. 28-125:

"Witnesses shall receive the following
fees: For attending before any court or
grand jury, per day, five dollars ($5) . . . ;
for each mile necessarily and actually
traveled in going to and returning from the
place of attendance, mileage at the rate pre-
scribed by law . . . . No witness shall
receive per diem or mileage in more than one
case covering the same period of time or the
same travel . . . ."

Thus, only mileage and a per diem payment of five dollars is
authorized by law to be paid witnesses. There appears to be no
authority whatever for payment of any sum for subsistence, as
claimed on the voucher in question.

You do not indicate whether the witness in question was sub-
poenaed to appear. It appears that he was the complainant. We
find no authority in the Kansas Act Against Discrimination, K.S.A.
44-1001 et seq., for payment of mileage and witness fees to
persons other than witnesses who are "summoned by subpoena of
the commission," for it is only these witnesses who are entitled
to witness and mileage fees as are allowed witnesses in proceed-
ings in district courts.

As you point out, the complainant is required to appear at a
hearing on the complaint. K.S.A. 1974 Supp. 44-1005 directs thus:

"The complainant shall appear at such
hearing in person, with or without counsel,
and submit testimony. Any individual
or individuals filing a complaint must
appear in person at such hearing."

The purpose of a subpoena, of course, is to compel the attendance
of persons as witnesses. Under the Act, subpoenas shall issue at
the request of the complainant or respondent, or at the instance
of the Commission itself when it is the complainant. Only persons
who attend pursuant to a subpoena are entitled to payment of
witness fees and mileage, and such persons are entitled to no other
payments therefor, such as subsistence. A complainant may not, of
course, require the Commission to issue a subpoena to him— or
herself to attend a hearing upon said person's complaint, for the
sole purpose of such a subpoena would be to entitle the complainant
to payment of witness fees and mileage to which he or she would
not otherwise be entitled. On the basis of the foregoing, we
find no authority for the payment of the amounts claimed in this
instance, if the witness did not attend pursuant to a subpoena
issued at the request of a party to the proceeding, in this instance,
the respondent.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj